

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1] and Claimant [REDACTED 2]
acting on behalf of himself and [REDACTED] and [REDACTED], and
all represented by REDACTED]

in re Account of Julius Littmann

Claim Numbers: 215351/ME, 215352/ME

Award Amount: 156,000.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1], née [REDACTED] and [REDACTED 2] (the “Claimants”) to the account of Julius Littmann (the “Account Owner”) at the Zurich branch of the [REDACTED] (the “Bank”).

All awards are published, but where a claimant had 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 Claimants each submitted a Claim Form identifying the Account Owner as their uncle, Julius Littmann, who was born on 3 July 1882 in Freystadt, Germany, and was married to Selma Littmann, née Mislowitzer, who was born 7 October 1881, with whom he had no children.

The Claimants stated that their uncle lived in Freystadt, and that he was a businessman who dealt in real estate, including large real estate properties in Berlin. Furthermore, the Claimants stated that their uncle held the title *Kaufmann* (businessman). According to the Claimants, their uncle, who was Jewish, fled Germany in the 1930s and moved to New York, New York, the United States, where he died on 12 April 1964. The Claimants stated that [REDACTED] died on 1 May 1953 in New York.

Claimant [REDACTED 1] was born on 20 January 1925 in Berlin and is the child of Julius Littmann’s brother [REDACTED]. Claimant [REDACTED 2] was born on 28 November 1920 in Wolin, Germany, and is the child of Julius Littmann’s sister, [REDACTED], née [REDACTED]. Claimant [REDACTED 2] is representing his brother [REDACTED], who was born on 7 July 1925 in Wolin, and his sister-in-law [REDACTED]. [REDACTED], the brother of [REDACTED] and [REDACTED], and the husband of [REDACTED], died on 11 April 1997.

The Claimants submitted the certificate of succession of Julius Littmann, the will of [REDACTED], and an extensive family tree.

Information Available in the Bank Records

The bank records consist of a power of attorney form dated 7 May 1930 in Freystadt, and two printouts from the Bank's database. According to these records, the Account Owner was Julius Littmann and the Power of Attorney Holder was Selma Littmann, née Meslowitzer, the Account Owner's wife. The bank records indicate that the Account Owner used the title *Kaufmann*. The bank records indicate that the Account Owner held a custody account.¹ The bank records do not indicate when the account at issue was closed, the value of the account, or to whom it was paid.

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 account and received the proceeds themselves.

The CRT's Analysis

Joinder of Claims

According to Article 43(1) of the Rules Governing the Claims Resolution Process (the "Rules"), claims to the same or related accounts may be joined in one proceeding at the CRT's discretion. In this case, the CRT determines it appropriate to join the two claims of the Claimants in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner and the Power of Attorney Holder as their uncle, Julius Littmann, and his wife. Their uncle's name matches the published name of the Account Owner, and his wife's name matches the published name of the Power of Attorney Holder. The Claimants identified their uncle's residence during the relevant time period as Freystadt, Germany, which matches published information about the Account Owner. The Claimants identified the Account Owner's profession as *Kaufmann*, which matches unpublished information about the Account Owner contained in the bank records.

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

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owner was a Target of Nazi Persecution. The Claimants stated that the Account Owner was Jewish, and that he fled Nazi Germany in the 1930s.

The Claimant's Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting documents demonstrating that the Account Owner was their uncle.

The Issue of Who Received the Proceeds

This case raises the question of whether the Account Owner could have accessed his account after leaving Germany. The bank records indicate that the Account Owner was a German national with an address in Germany. Given the Nazi enforcement of flight taxes, the Nazi campaign to confiscate the domestic and foreign assets of its Jewish nationals, and the application of Presumptions (h) 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 or his 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 Claimants. First, the claim is admissible in accordance with the criteria contained in Article 23 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owner was their uncle, 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 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. 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 156,000.00 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 claimants shall be 65% of the Certified Award, and the claimants may receive a second payment of up to 35% of

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

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 101,400.00 Swiss Francs.

Division of the Award

In this case, the Claimants have submitted an incomplete chain of inheritance documents. In accordance with Article 29(2)(c), the distribution of the award amount will therefore be decided using the general principles of distribution contained in Article 29(1) in conjunction with principles of fairness and equity. Consequently, the CRT concludes that because [REDACTED], who is related to the Account Owner by marriage only and is therefore not entitled to a share of the Award under Article 29, is entitled to a share of the Account Owner's estate under the inheritance documents submitted by the Claimants, she should therefore be entitled to share in this Award amount. The CRT concludes that Claimant [REDACTED], who is an heir under the inheritance documents and is entitled to receive one-half of the Award amount under Article 29, is to receive one-half of the total Award amount. Claimant [REDACTED], [REDACTED], and [REDACTED] are to share the other one-half of the Award amount, each receiving one-sixth of the total Award amount.

Scope of the Award

The Claimants should be aware that, pursuant to Article 25 of the Rules, the CRT will carry out further research on their claim to determine whether there are additional Swiss bank accounts to which they 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).