

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]
also acting on behalf of her nephew, [REDACTED],
and her daughter [REDACTED]

in re Account of Rudolf Loewe

Claim Number: 220107/MD

Award Amount: 25,680.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the account of Rudolf Loewe (the “Account Owner”) at 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 father, Rudolf Loewe, who was born in 1875 in Vienna, Austria, and was married to [REDACTED], who was born in 1879, and with whom he had two children: [REDACTED] (the Claimant) who was born in 1913 in Vienna, and [REDACTED], who was born in 1915 in Baden, Austria. The Claimant indicated that her father, who was Jewish, was born to [REDACTED] and [REDACTED]. The Claimant further stated that her father owned a scarves and neckwear production company in Vienna, where he lived with his family. The Claimant asserted that Rudolf Loewe died in 1936, and that his wife, [REDACTED], took over the business as Rudolf Loewe’s sole heir. The Claimant indicated that her father may have owned an account under his company’s name. The Claimant stated that [REDACTED]’s company was “aryanized” and that she was murdered by the Nazis in 1944. The Claimant stated that she and her husband were incarcerated by the Nazis in 1938 and that they fled from Austria to the United States after their release. According to the information provided by the Claimant, her sister [REDACTED], née [REDACTED], died in 1997 in the United States, and her sole heir is [REDACTED], whom the Claimant represents. In support of her claim, the Claimant submitted numerous documents, including her father’s birth and death certificates, her parent’s marriage certificate, and correspondence from the 1940s regarding the possessions of the Loewe family in Vienna.

The Claimant is representing [REDACTED], her nephew, who was born on 7 May 1948 in Columbus, Ohio, the United States and her daughter, [REDACTED], who was born on 9 June 1944 in New York, New York, the United States.

Information Available in the Bank Records

The bank records consist of a bank customer card. According to these records, the Account Owner was Rudolf Loewe from Vienna. The bank records indicate that the Account Owner held a demand deposit account that was closed on 10 April 1938. The amount in the account on the date of its closure is not known. There is no evidence in the bank records that the Account Owner or his 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 father's name matches the published name of the Account Owner. The Claimant stated that her father lived in Vienna, which matches unpublished information about the Account Owner contained in the bank records. The CRT notes that there are no other claims to this account. The CRT notes that a database containing the names of victims of Nazi persecution includes a person named [REDACTED], and indicates that she was born in 1879, which matches the information about the Account Owner's wife provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel. There are no other claimants to the account of Rudolf Loewe.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has made a plausible showing that the Account Owner's heir was a Victim of Nazi Persecution. The CRT notes that the Account Owner, who was Jewish, died in 1936, before the *Anschluss* in Austria. However, the Account Owner's heir, who was also the beneficiary of the account, was his wife, [REDACTED]. The Claimant stated that [REDACTED] was Jewish, that her business was confiscated and she was murdered by the Nazis. These facts are supported by the CRT database of Victims of Nazi Persecution as described above.

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 her parents' birth and marriage certificates and family correspondence, demonstrating that she is the Account Owner's daughter, and that the relatives whom she represents are the Account Owner's grandchildren. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

The facts of this case are similar to other cases that have come before the CRT in which, after the *Anschluss*, Austrian citizens who are Jewish have accounts which are closed unknown to whom or are transferred to Nazi-controlled banks. Given that the CRT's precedent indicates that it is plausible in such situations that the account proceeds were paid to the Nazis, and the application of Presumptions (a), (h) 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 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 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 she is the Account Owner's daughter, and that her relatives whom she represents are the Account Owner's grandchildren, 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 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 demand deposit account was 2,140.00 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 25,680.00 Swiss Francs.

Division of the Award

The Claimant is representing her daughter, [REDACTED], and her nephew, [REDACTED], in these proceedings. According to Article 29 of the Rules, children of Account Owners who have submitted a claim are entitled to equal shares of the Award. Where a child of the Account Owner is deceased, but that child's descendants are living and have submitted a claim or claims, those descendants are entitled to equal portions of the deceased child's share of the Award. Accordingly, the Claimant and her nephew, [REDACTED], are each entitled to one-half of the award.

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

Initial Payment

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, however, because the Claimant is age 75 or older, she is entitled to receive payment of 100% of her portion of the total award amount. Accordingly, the initial payment amount is 21,186.00 Swiss Francs, which is comprised of 100% of the Claimant's portion of the award (12,840.00 Swiss Francs) and 65% of [REDACTED]'s portion of the award (8,346.00 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

January 28, 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).