

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Garry Warner-Loewenthal

in re Account of Julius Loewenthal

Claim Number: 205154/MBC

Award Amount: 47,400.00 Swiss Francs

This Certified Award is based upon the claim of Garry Warner-Loewenthal (the “Claimant”) to the account of Julius Loewenthal (the “Account Owner”) at 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 his father, Julius Loewenthal, who was born on 24 August 1874 in Wiesbaden, Germany, and was married to Else (Elsa) Loewenthal, née Werner, on 16 November 1903 in Eschwege, Germany. The Claimant stated that his father, who was Jewish, was the owner of a large manufacturer of knitwear known as L. S. Brinkmann, GmbH. The Claimant stated that Else and Julius Loewenthal had four children: Ruth Fulda, née Loewenthal, Hilde Stern, née Loewenthal, Herbert Loewenthal, and the Claimant. The Claimant stated that in 1935 his sister Hilde married Max Stern, who was born in Germany but was a citizen of the United States, and that they moved to New York, where she died on 29 June 1946. The Claimant further stated that his brother Herbert was forced to leave Germany in approximately 1934 or 1935. According to the Claimant, Herbert Loewenthal immigrated to Switzerland, where he remained until his death in 1962. The Claimant stated that his sister Ruth and her husband, Leonard Fulda, were planning to immigrate to the United States in 1937. Prior to their immigration, they, along with the Claimant’s father, traveled to Zurich to visit Herbert Loewenthal and to conduct business. The Claimant explained that, during their return trip from Switzerland, they became involved in a serious car accident, which killed his sister and brother-in-law instantly. The Claimant stated that his father survived, but suffered severe injuries, including memory loss. The Claimant stated that he suspected that his father opened a bank account in Switzerland during that visit, but, because of his father’s injuries, could not confirm its existence.

According to the Claimant, his father's business was confiscated by the Nazis. The Claimant stated that his father fled to the Netherlands in 1938, then traveled to London, where he awaited passage to the United States. The Claimant further stated that his father died on 20 November 1946 in New York.

The Claimant stated that he is the son Julius and Else Loewenthal and that he was born in 1918 in Eschwege. According to the Claimant, he fled to England in 1938. The Claimant stated that, upon the outbreak of the Second World War, he joined the British Armed Forces. He further stated that, in 1940, he received a request from the War Office that, for his own protection, he secretly change his name from that given to him at birth, "Karl Werner Loewenthal," to "Garry Charles Warner." The Claimant stated that upon his immigration to the United States and his naturalization as a United States citizen, he added Loewenthal to his legal name, which now reads "Garry Charles Warner-Loewenthal."

The Claimant stated that when his brother Herbert Loewenthal died in Zurich in 1962, he asked the attorney who settled his brother's estate to search for an account in his father's name with the Swiss Banking Association, and that the attorney reported that his search yielded no results.

In support of his claim, the Claimant submitted his passport, which identifies Eschwege as his place of birth, his parents' marriage certificate, which indicates that his parents resided in Eschwege, and his parents' Certificates of Naturalization.

Information Available in the Bank Records

The bank record consists of a printout from the Bank's database. According to this record, the sole Account Owner was Julius Loewenthal and the Power of Attorney Holder was Elsa Loewenthal. The bank record indicates that the Account Owner held an account of unknown type. The record further shows that the account was opened in 1937. The exact date of closure is unknown, however, the bank record indicates that the account was labeled closed by the Bank by 1939. The amount in the account on the date of its closure is unknown. 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. His father's name matches the published name of the Account Owner, and his mother's name matches the published name of the Power of Attorney Holder. Additionally, the Claimant's birthplace as identified in his birth certificate and his parents' residence as identified in their marriage certificate matches the published residence of the Account Owner. Furthermore, the Claimant indicated that his father

opened the account in 1937 during a visit to Zurich, which matches the unpublished information about the account contained in the bank records.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has plausibly shown that the Account Owner was a Victim of Nazi Persecution. The Claimant stated that the Account Owner was Jewish and that his factory was taken over by the Nazis. The Claimant also stated that his parents were forced to flee Germany in 1938.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting documents, including his parents' marriage certificate and Certificates of Naturalization, that demonstrate that he is the Account Owner's son. The Claimant stated that he is the Account Owner's last surviving child, and there is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

Based on the precedent and the Rules Governing the Claims Resolution Process (the "Rules"), the CRT applies presumptions to determine whether Account Owners or their heirs received the proceeds of their accounts. These presumptions are contained in Appendix A.¹ The CRT concludes in this case that one or more of these presumptions applies and it is therefore plausible 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 23 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owner was his father, and that relationship justifies 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 Independent Committee of Eminent Persons ("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 35% of the Certified Award, and the Claimant may receive a second payment of up to 65% of

¹ 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 35% of the total award amount is 16,590.00 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 his claim to determine whether there are additional Swiss bank accounts to which he 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

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. "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 does not exist 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).