

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

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

in re Account of Max and Emmy Maier

Claim Numbers: 210925/SJ, 213598/SJ ¹

Award Amount: 156,000.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED] (the “Claimant”) to the account of Max and Emmy Maier (the “Account Owners”) at the Zurich 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 Claim Forms identifying the Account Owners as his grandmother and grandfather, Emmy Maier, née [REDACTED], who was born on 14 March 1893 in Frankfurt am Main, Germany, and Dr. Max Maier, who was born on 17 November 1884 in Fischach, Germany. The Claimant’s grandparents were married on 9 March 1920 in Frankfurt am Main. The Claimant stated that his grandparents occasionally traveled to Switzerland as tourists during the 1920s and 1930s. The Claimant stated that his grandparents were subject to all restrictions imposed on German Jews starting in 1933 and that his grandfather was a physician in Frankfurt until 1933, when he was restricted from practicing medicine. Additionally, the Claimant stated that his grandfather was arrested on *Kristallnacht* (“the Night of the Broken Glass”) and was imprisoned in Buchenwald. The Claimant added that, though his grandfather was released, virtually all of his assets were seized. According to the Claimant, his grandparents were able to leave Germany in April 1939, and they found temporary refuge in London and then continued on to the United States in December of 1939. The Claimant submitted a copy of his family tree, copies of his grandparents’ death certificates, and copies of the wills of his grandfather and each of his parents. The Claimant indicated that he was born on 6 August 1948 in New York, New

¹ The Claimant submitted an additional claim to the account of [REDACTED], which is registered under the Claim Number 213953. The CRT will treat the claim to this account in a separate decision.

York, the United States. The Claimant is representing [REDACTED], his sister, who was born on 6 February 1950, also in New York.

The Claimant submitted an Initial Questionnaire identifying the Account Owners as his grandparents, Dr. Max Maier and Emmy Maier, née [REDACTED], from Frankfurt am Main, Germany.

Information Available in the Bank Records

The bank records consist of two printouts from the Bank's database. According to these records, the Account Owners were Max and Emmy Maier who resided in Frankfurt am Main, Germany. The bank records indicate that the Account Owners held a custody account, numbered 30508, which was opened in 1930. The account was closed on 22 August 1938. The amount in the account on the date of its closure is unknown. The bank records do not show to whom the account was paid, nor do these records indicate the value of this account. There is no evidence in the bank records that the Account Owners 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 Claimant in one proceeding.

Identification of the Account Owner

The Claimant has plausibly identified the Account Owners. His grandparents' names match the published names of the Account Owners. The Claimant also identified his grandparents' place of residence as Frankfurt am Main, which matches published information about the Account Owners contained in the bank records. Despite the fact that the Account Owners were published separately on the list of bank accounts published by the ICEP Investigation on 5 February 2001, the Claimant was able to identify a connection between them, which is supported by unpublished information in the bank records. In support of his claim, the Claimant submitted documents, including a copy of his family tree and the wills of his grandfather and of his parents.

The CRT notes that the Claimant filed an Initial Questionnaire with the Court in 1999, asserting his entitlement to a Swiss bank account owned by Dr. Max Maier and Emmy Maier, née [REDACTED], from Frankfurt am Main, Germany, 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 his present claim not simply on the fact that individuals identified on the ICEP List as owning a Swiss bank account

bear the same names as his relatives, but rather on a direct family relationship that was known to him before the publication of the ICEP List. It also indicates that the Claimant had reason to believe that his relatives 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 Owners were Victims of Nazi Persecution. The Claimant stated that the Account Owners were Jewish, and were subjects of Nazi persecution beginning in 1933 in Germany. The Claimant also indicated that his grandfather was prevented from practicing his profession, was arrested on *Kristallnacht*, and was imprisoned in Buchenwald. The Claimant stated that this grandparents fled Germany in 1939.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owners by submitting documents demonstrating that they were his grandparents. There is no information to indicate that the Account Owner has surviving heirs other than the Claimant's sister, whom he is representing in these proceedings.

The Issue of Who Received the Proceeds

Given Account Owner Max Maier's imprisonment in Buchenwald, the seizure of his assets, the closure of the account in 1938, and the application of Presumptions (a) and (j) contained in Appendix A,² the CRT concludes that it is plausible that the account proceeds were not paid to the Account 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. Second, the Claimant has plausibly demonstrated that the Account Owners were his grandparents, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owners 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 Independent Committee of Eminent Persons ("ICEP" or 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

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

factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount of 156,000.00 Swiss Francs.

Division of the Award

The Claimant is representing his sister in these proceedings. According to Article 29 of the Rules, his sister is entitled to receive one half (1/2) of any payment made to the Claimant.

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, 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.

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

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).