

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED 1]
also acting on behalf of [REDACTED], [REDACTED], [REDACTED], and [REDACTED]
[REDACTED];

Claimant [REDACTED 2]
represented by [REDACTED];

Claimant [REDACTED 3]; and

Claimant [REDACTED 4]
represented by [REDACTED]

in re Account of Elsa and Emil Menyasz

Claim Numbers: 004425/LK, 218350/LK, 218364/LK, 220726/LK, 223048/LK, 223052/LK

Award Amount: 47,400.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”), [REDACTED 2] (“Claimant [REDACTED 2]”), [REDACTED 3] (“Claimant [REDACTED 3]”), and [REDACTED 4] (“Claimant [REDACTED 4]”) (together the “Claimants”) to the account of Elsa and Emil Menyasz (the “Account Owners”)¹ at the Geneva 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 Claimants

Claimant [REDACTED 1] submitted two Claim Forms identifying the Account Owners as her maternal uncle and his wife, Dr. Emil Menyasz and Elsa Menyasz, née [REDACTED], and identified her own mother, [REDACTED], née [REDACTED], as Emil’s sister. Claimant

¹ Claimant Hecht submitted one Claim Form to the account of Samuel Leb. Claimant Knaan submitted two Claim Forms, the second, to the account of Betty Leb. The CRT will treat the claims to these accounts in separate decisions.

[REDACTED 1] stated that Emil Menyasz was born in 1903, in Petrosani, Romania and was married to Elsa Menyasz in Cluj, around 1938. According to Claimant [REDACTED 1], her uncle, who was Jewish, lived in Bucharest, and later moved to Cluj, and worked as a gynecologist in a state hospital. Claimant [REDACTED 1] asserted that because they were Jewish, Elsa Menyasz and the couple's daughter, who was born in Bucharest in 1939, were sent from Cluj to Auschwitz where they perished in 1943 or 1944. In a telephone conversation, Claimant [REDACTED 1] also asserted that around the same time, Emil Menyasz was sent to the Transnistria concentration camp where he remained until he returned to Cluj after the Second World War. Claimant [REDACTED 1] indicated that she was born on 15 October 1926 in Petrosani. Claimant [REDACTED 1] is also representing her cousins, [REDACTED], [REDACTED], [REDACTED], and [REDACTED], whose mother, [REDACTED], was Emil's other sister.

Claimant [REDACTED 2] submitted a Claim Form identifying the Account Owners as her first cousin, Elsa Menyas, née [REDACTED], and her husband, Dr. Emil Menyas. Claimant [REDACTED 2] stated that her father, [REDACTED], and Elsa Menyas' father, [REDACTED], were brothers. Claimant [REDACTED 2] further stated that Elsa Menyas, née [REDACTED], was born in 1915 in Cluj, and married Emil Menyas and moved to Bucharest around 1933. Claimant [REDACTED 2] asserted that Elsa Menyas and the couple's only child, [REDACTED], who were both Jewish, perished in Auschwitz. Claimant [REDACTED 2] further asserted that Dr. Emil Menyas, who was Jewish, survived the Holocaust and died in 1959. The Claimant indicated that she was born on 13 June 1918 in Osorhel, Romania.

Claimant [REDACTED 3] submitted a Claim Form identifying the Account Owners as her first cousin once removed and her husband, Elsa Menyasz, née [REDACTED], and Dr. Emil Menyasz. Claimant [REDACTED 3] stated that her maternal grandmother, [REDACTED], née [REDACTED], and Elsa's mother, [REDACTED], née [REDACTED], were sisters. Claimant [REDACTED 3] further stated that Elsa was born in August 1915 in Kolozsvár, Hungary, and was married to Dr. Emil Menyasz in August 1933 in Cluj. Claimant [REDACTED 3] identified her cousins' street addresses in Romania and Hungary from 1915 to 1944 and noted that the two lived at Armeneasca 6/8 Bucharest, from 1933 to 1940. According to Claimant [REDACTED 3], Elsa and her daughter, [REDACTED], who were Jewish, perished in Auschwitz on 9 June 1944. Claimant [REDACTED 3] asserted that Emil Menyasz, who was Jewish, was born in 1902 and died in 1976 in Cluj, Romania. Claimant [REDACTED 3] indicated that she was born on 3 June 1936 in Cluj.

Claimant [REDACTED 4], who assumed her late husband's claim, submitted a Claim Form identifying the Account Owners as his first cousin and his wife, Dr. Emil Menyasz and Elsa Menyasz, née [REDACTED], who were married in Cluj. Claimant [REDACTED 4] stated that her husband's father, [REDACTED], and Emil Menyasz's father, [REDACTED], were brothers. Claimant [REDACTED 4] further stated that her husband's mother, [REDACTED], née [REDACTED], and Emil Menyasz's mother, [REDACTED], née [REDACTED], were sisters. Claimant [REDACTED 4] asserted that Emil Menyasz, who was Jewish, was born in 1905 in Romania and worked as a doctor and professor in gynecology and obstetrics in Bucharest, until 1933 and then in Cluj until 1941. According to Claimant [REDACTED 4], Emil Menyasz was sent from Cluj, to the Transnistria concentration camp from 1941 to 1945, when he returned to

live in Cluj where he later died. Claimant [REDACTED 4] stated that because they were Jewish, Elsa Menyasz and the couple's daughter, [REDACTED], who was born around 1936, were deported to Auschwitz where they perished. Claimant [REDACTED 4] indicated that she was born on 22 December 1926 in Bucharest.

Information Available in the Bank Records

The bank records consist of an opening card and a printout from the Bank's database. According to these records, the Account Owners were Dr. Emil Menyasz and Mme. Elsa Menyasz, née [REDACTED], who lived at 14 Armeneasca in Bucharest, Romania. The bank records indicate the account was opened 22 December 1938 and provides an alternate contact of [REDACTED] at 6 Park Lane, Boughton, Manchester. The bank records further indicate that the Account Owners held an account of unknown type. The bank record does not show when the account at issue was closed, 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 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 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 six claims of the Claimants in one proceeding.

Identification of the Account Owners

The Claimants have plausibly identified the Account Owners. The Claimants' relatives' names match the published names of the Account Owners. The Claimants each identified Emil Menyasz's profession as a doctor, which matches unpublished information about him contained in the bank records. Claimant [REDACTED 3] also identified her relatives' street address of Armeneasca 6/8 in Bucharest, Romania, which substantially matches the unpublished street address contained in the bank records. In support of their claims, the Claimants submitted documents, including family trees.

Status of the Account Owners as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimants stated that the Account Owners were Jewish and that Elsa Menyasz

perished in Auschwitz. Claimants [REDACTED 1] and Claimant [REDACTED 4] stated that Dr. Emil Menyasz was sent to the Transnistria concentration camp during the Second World War.

The Claimants' Relationships to the Account Owners

Claimant [REDACTED 1], Claimant [REDACTED 2], Claimant [REDACTED 3], and Claimant [REDACTED 4] have plausibly demonstrated that they are related to the Account Owners. Claimant [REDACTED 2] and Claimant [REDACTED 3] are each related to Account Owner Elsa Menyasz. Elsa Menyasz is Claimant [REDACTED 2] paternal cousin and is Claimant [REDACTED 3] second cousin descended from her maternal grandmother. Claimant [REDACTED 1] and Claimant [REDACTED 4] are each related to Account Owner Emil Menyasz. Emil Menyasz is Claimant [REDACTED 1] maternal uncle and Claimant [REDACTED 4] late husband's paternal cousin. According to Article 29, Claimant [REDACTED 2] and [REDACTED 3] are each entitled to receive 50% of Elsa Menyasz's share of the account. Claimant [REDACTED 1] and Claimant [REDACTED 4] late husband are each entitled to receive 50% of Emil Menyasz's share of the account. Given that Claimant [REDACTED 4] has assumed her late husband's claim, the CRT has determined that in accordance with the principles of fairness and equity of Article 33 of the Rules, Claimant [REDACTED 4] is entitled to receive her late husband's share of the account.

The Issue of Who Received the Proceeds

Based on its precedent and 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.² The CRT concludes, given that as the German invasion spread across Europe as the Second World War progressed it would have been increasingly difficult and dangerous for the Account Owners to travel to Switzerland to access their account, the imposition of Swiss visa requirements in January 1939 would have also made it difficult for the Account Owners to access their account after that time, the Account Owners were victims of Nazi persecution in Romania, and that presumption (j) applies in this case, it is plausible that the Account Owners did not receive the proceeds of the account during the War. Given the application of presumption (h), it is plausible that the Account Owners and their heirs did not receive the proceeds of the account after the War.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimants. First, the claims are admissible in accordance with the criteria contained in Article 23 of the Rules Governing the Claims Resolution Process (the "Rules"). Second, the Claimants have plausibly demonstrated that the Account Owners were their relatives, and those relationships justify 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 accounts.

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

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 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 Claimants shall be 35% of the Certified Award, and the Claimants may receive a second payment of up to 65% 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 35% of the total award amount is 16,590.00 Swiss Francs.

Division of the Award

In accordance with Article 31 of the Rules, each Account Owner is presumed to have had an equal share of the account. As indicated above, each of the Claimants is entitled to 25% of the award amount. Claimant [REDACTED 1] is representing her four cousins in these proceedings. According to Article 29 of the Rules, each of her cousins is entitled to receive 20% of any payment made to Claimant [REDACTED 1].

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 claims 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

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).