

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants [REDACTED1], and [REDACTED2],

in re Account of Siegmund Neumann

Claim Numbers: 218300/SH, 220171/SH

Award Amount: 47,400.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED1], (“Claimant [REDACTED1],”) and [REDACTED2], (“Claimant [REDACTED2],”) (together the “Claimants”) to the account of Siegmund Neumann (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 Claimants submitted a Claim Form and an Initial Questionnaire identifying the Account Owner as their paternal uncle Siegmund (Simon) Neumann, who was born in 1882 in Vienna, Austria, and was married to [REDACTED], née [REDACTED], in 1919 in Budapest, Hungary. The couple, who were Jewish, had two children: [REDACTED], who was born in 1921 in Vienna, and died in 1934 in Vienna; and [REDACTED], née [REDACTED], who was born in 1938 in Vienna, and died in 1997 in Paris, France. According to the Claimants, their uncle owned a large fruit and vegetable import/export business, and property in both Budapest and Vienna. The Claimants stated that their uncle held both Austrian and Hungarian citizenship, and that he resided at Johannesgasse in Vienna I. According to the Claimants, their uncle was a wealthy and prominent man in Vienna’s Jewish community. The Claimants indicated that soon after the Nazis annexed Austria, their uncle was arrested and interned in a concentration camp, but the Claimants’ father managed to acquire Hungarian passports for the Neumann family, and therefore they were released from the concentration camp, and moved to Budapest, Hungary, where through contacts with the [REDACTED] family, their uncle was appointed as a general manager for the [REDACTED] enterprise in Lebanon. However, according to the Claimants, on their way to Lebanon, the Neumann family stopped in Nice, France, where they were forced to stay due to Mrs. Neumann’s fatal illness. By this time the Nazis had already occupied France, and their uncle was deported and never heard from again. The Claimants stated that their uncle perished in a concentration camp in Germany in 1944. Their uncle’s daughter, [REDACTED], was rescued by a French family and survived the Second World War. According to the

Claimants, their uncle was asked by the rest of the family during the 1930s to open a Swiss bank account in order to shelter the family's wealth from the Nazis, and he deposited large sums of monies, gold, jewelry and other valuables in the Bank during his trips to Switzerland. The Claimants stated that after the Second World War was over, the surviving members of the family tried to recover the assets but were denied by the Swiss banks, because they could not provide their uncle's death certificate, since he perished in a concentration camp.

Claimant [REDACTED1] indicated that he was born on 23 May 1936, and Claimant [REDACTED2] indicated that he was born on 8 September 1932, both in Budapest. Claimant [REDACTED1] stated that due to the Second World War and the subsequent period of Communism, all relevant documentation has been lost. The Claimants previously submitted an Initial Questionnaire with the Court in 1999 asserting their entitlement to a Swiss bank account owned by [REDACTED] and [REDACTED].

Information Available in the Bank Record

The bank record consists of a printout from the Bank's database. According to this record, the Account Owner was Siegmund Neumann from Vienna, Austria. The bank record indicates that the Account Owner held an account of unknown type, numbered 62028. The bank record further indicates that on 8 June 1938, the account was closed unknown by whom. The bank records do not show the value of this account. 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

Joinder of Claims

According to Article 37(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. Their uncle's name and place of residence match the published name and residence of the Account Owner. The CRT also notes that a database containing the names of victims of Nazi persecution includes a person named Siegmund Neumann, and indicates that his date of birth was 17 February 1882, and his place of birth was Vienna, Austria, which matches the information about the Account Owner provided by the Claimants. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel. Moreover, the Claimants filed an Initial Questionnaire with the Court in 1999 asserting their entitlement to a Swiss bank account owned by Simon Neumann, who was born in Vienna, Austria, 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 Claimants have based their present claim not simply on the fact that an individual identified on the ICEP List as owning a Swiss bank account bears the same name as their relative, but rather on a direct family relationship that was known to them before the publication of the ICEP List. It also indicates that the Claimants had reason to believe that a family member owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimants. Finally, the CRT notes that the only other claim to this account was disconfirmed, because the claimed account owner was from a different country.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimants stated that the Account Owner was Jewish, was deported by the Nazis to a concentration camp while in France, and perished in a concentration camp in 1944. As noted above, a person named Siegmund Neumann was listed in the CRT database of victims of Nazi persecution.

The Claimant’s Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting a family tree. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

Given the existence of Nazi confiscatory legislation in Austria and the application of Presumptions (a), (e), (i), (h) and (j) as provided by Article 28 of the Rules (see Appendix A), 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, 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 18 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 nor his heirs received the proceeds of the claimed account.

Amount of the Award

Pursuant to Article 29 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 31(1) of the Rules, to produce a total award amount of 47,400.00 Swiss Francs.

Division of the Award

According to Article 23(c) of the Rules, if the Account Owner's spouse has not submitted a claim, the award shall be in favor of any descendants of the Account Owner who have submitted a claim, in equal shares by representation. In this case, the Claimants are brothers; therefore, each brother is entitled to one-half the Award amount.

Scope of the Award

The Claimants should be aware that, pursuant to Article 20 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
April 21, 2003

**ARTICLE 28 OF THE RULES GOVERNING THE CLAIMS RESOLUTION PROCESS
(AS AMENDED)**

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).