

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED1]
acting on behalf of [REDACTED], [REDACTED] and
[REDACTED]

and

to Claimant [REDACTED2]

in re Account of *P.E. Obermann / Successori B. & S. Sonnenberger*

Claim Numbers: 218005/MO, 220428/MO¹

Award Amount: 181,680.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED1] (“Claimant [REDACTED1]”) and [REDACTED2] (“Claimant [REDACTED2]”) (together “the Claimants”) to the accounts of *P.E. Obermann / Successori B. & S. Sonnenberger* (the “Account Owner”) 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 Claimants

The Claimants submitted two Claim Forms identifying the Account Owner as the family partnership, *P.E. Obermann / Successori B. & S. Sonnenberger*, which was co-owned by their paternal grandfather, Bernardo Sonnenberger, and his younger brother, Sigfrido Sonnenberger. The Claimants indicated that their grandfather was born on 6 June 1882 in Frankfurt am Main, Germany, and was married to [REDACTED], née [REDACTED], who was a Swiss citizen. The Claimants indicated that their great-uncle, Sigfrido Sonnenberger, was born on 14 September 1893 in Frankfurt am Main, Germany, and that he did not marry or have any children. According to the Claimants, their grandfather and great-uncle were the sons of [REDACTED]

¹ The Claimants submitted five additional claims to the accounts of their grandfather, Bernardo Sonnenberger, their grandmother, [REDACTED], and their great-uncle, Sigfrido Sonnenberger, which are registered under the claim numbers 218006, 218007, 220427, 220429 and 220821. The CRT will treat the claims to these accounts in separate decisions.

and [REDACTED], née [REDACTED]. The Claimants further indicated that the brothers moved to Genoa, Italy, in 1922 and resided at Via Emanuel Filiberto 85. [REDACTED2] indicated that in 1935 his great-uncle moved to Via Corvette 113, Genoa. The Claimants further stated that their grandfather's and great-uncle's partnership, which was a metal import and export business, was based at Piazza Umberto Primo 25, Genoa, as of 1924. In support of their claim, the Claimants submitted a copy of the corporate registration certificate for *P.E. Obermann/Successori B. & S. Sonnenberger*, showing that the partnership was established on 29 March 1922 and was involved in a direct import business in raw materials for the steel and metal industry. Claimant [REDACTED1] asserted that his grandfather was the Honorary Austrian Consul in Genoa until the *Anschluss* in 1938. Claimant [REDACTED1] asserted that in the fall of 1938, his grandfather, who was Jewish, had been forced to sell his home, and had been stripped of his Italian citizenship, fled Italy as a stowaway on a cargo ship to Canada. He lived for a several months in New York, the United States, before emigrating to Mexico City, Mexico, where he resided until his death on 5 December 1955. The Claimants stated that Sigfrido Sonnenberger left Italy in 1939, fled to Cuba, and then moved to the United States and then to Mexico City, Mexico, in 1940. He died of a heart attack in Mexico City that same year. Claimant [REDACTED1] asserted that before their escape from Europe, co-owners of the family partnership placed the partnership, along with other assets of the family, in the hands of a trustee. This trustee embezzled the assets of the partnership. According to Claimant [REDACTED1], after the Second World War, his grandfather was reluctant to speak of the family's looted assets, regarded them as a lost cause, and was therefore unwilling to make any effort to retrieve them.

The Claimants indicated that their grandfather had two children: the Claimants' father, [REDACTED], who was born on 1 December 1922 in Genoa and died on 22 May 1986 in Dallas, Texas, the United States, and [REDACTED], née [REDACTED], who was born in Genoa on 7 August 1928. Claimant [REDACTED1] indicated that he was born on 1 December 1951 in Mexico City. Claimant [REDACTED1] is representing his aunt, [REDACTED], née [REDACTED], and his siblings, [REDACTED], who was born on 8 December 1952, in Mexico City, and [REDACTED], who was born on 7 December 1960 in Lawton, Oklahoma, the United States. Claimant [REDACTED2] stated that he was born on 12 March 1955 in Mexico City. In support of their claim, the Claimants submitted copies of Bernardo Sonnenberger's and Sigfrido Sonnenberger's birth certificates, their Italian naturalization certificates, the family's chart as registered with the Genoa municipality, an honorary Austrian consulate certificate granted to Bernardo Sonnenberger in 1931, his Mexican naturalization certificate, and his death certificate. The Claimants submitted copies of Sigfrido Sonnenberger's Mexican immigrant identification card, his will, and his death certificate. The Claimants also submitted copies of the death certificate of [REDACTED], and the birth certificates of the Claimants and of [REDACTED], née [REDACTED].

Information Available in the Bank Records

The bank records consist of a signatory rights certificate, documents relating to the Bank's internal survey from 1959, documents relating to a survey conducted pursuant to the Swiss Federal Decree of 1962 concerning assets of missing foreigners or stateless persons persecuted due to race, religion, or politics, and printouts from the Bank's database. According to these records, the Account Owner was *P.E. Obermann/Successori B. & S. Sonnenberger*, a legal entity domiciled in Genoa, Italy (Casella postale 250). The bank records also indicate that the co-owners of the Account Owner were Bernardo Sonnenberger and Sigfrido Sonnenberger and that the Bank was instructed to hold all correspondence to the Account Owner. The bank records indicate that the Account Owner held a custody account, numbered 268849, that was opened by 12 May 1932 and was closed on 31 December 1979. The bank records do not show to whom this account was paid, nor do these records indicate the value of this account. The bank records also indicate that the Account Owner held a demand deposit account that was opened on 20 July 1936. The amount in this account on the date of its inclusion in the 1959 survey on 7 September 1959 was 441.00 Swiss Francs and the Account Owner was identified in the survey as probably having Jewish owners. 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 and that the last contact with the Account Owner was in 1936. There is no evidence in the bank records that the Account Owner or its owners or their heirs closed the accounts at issue 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 Claimants in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner. The names of their grandfather and great-uncle as well as the name of the family partnership match the published names of the Account Owner and its owners. The Claimants identified the location of the Account Owner, which matches published information about the Account Owner contained in the bank records. Finally, the Claimants submitted samples of their grandfather's and great-uncle's signatures, which match the signature samples contained in the bank records.

Status of the Owners of the Account Owner as Victims of Nazi Persecution

The Claimants have made a plausible showing that the owners of the Account Owner were Victims of Nazi Persecution. The Claimants stated that the owners of the Account Owner were Jewish and that they fled Europe due to Nazi persecution.

The Claimants' Relationship to the Owners of the Account Owner

The Claimants have plausibly demonstrated that they are related to the owners of the Account Owner by submitting documents demonstrating that they are their grandchildren and great-nephews. There is no information to indicate that the owners of the Account Owner have surviving heirs other than the Claimants and those they represent.

The Issue of Who Received the Proceeds

Given the application of Presumptions (b), (h), and (j) contained in Appendix A,² the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner, the owners of the Account Owner, 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 or successors in interest received the proceeds of their accounts.

Basis for the Award

The CRT has determined that an Award may be made in favor of the Claimants. First, the claim is admissible in accordance with the criteria contained in Article 23 of the Rules. Second, the Claimants have plausibly demonstrated that the owners of the Account Owner were their grandfather and great-uncle, and those relationships justify an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner, the owners of the Account Owner, nor their heirs or successors in interest received the proceeds of the claimed accounts.

Amount of the Award

In this case the Account Owner held a custody account and a demand deposit account, both of unknown value. Pursuant to Article 35 of the Rules, when the value of an account is unknown, as is the case here with respect to the custody account, 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 custody account was 13,000.00 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 an award amount of 156,000.00 Swiss Francs for the custody account.

The bank records indicate that the value of the demand deposit account as of 7 September 1959 was 441.00 Swiss Francs. According to Article 35 of the Rules, if the amount in a demand deposit account was less than 2,140.00 Swiss Francs, and in the absence of plausible evidence to

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

the contrary, the amount in the account shall be determined to be 2,140.00 Swiss Francs. The present value of the amount of the award is determined by multiplying the balance as determined by Article 35 by a factor of 12, in accordance with Article 37(1) of the Rules, to produce an award amount of 25,680.00 Swiss Francs for the demand deposit account.

Consequently, the total award amount is 181,680.00 Swiss Francs.

Division of the Award

Claimant [REDACTED1] is representing his aunt and his siblings in these proceedings. According to Article 29 of the Rules, his aunt is entitled to receive one-half of the Award amount, and the Claimants and their siblings are each entitled to receive one-eighth of the Award amount.

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 values and 65% of the total award amount is 118,092.00 Swiss Francs.

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

31 December 2002

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).