

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants Augusta Rosa Lanner and Pearl Parnes

in re Account of Naftali Hirsch Parnes

Claim Numbers: 211850/MO; 215925/MO; 218247/MO¹

Award Amount: 47,400.00 Swiss Francs

This Certified Award is based upon the claims of Augusta Rosa Lanner, née Parnes, (“Claimant Lanner”) and Pearl Parnes, née Altholz, (“Claimant Parnes”) (together: the “Claimants”) to the account of Naftali Hirsch Parnes (the “Account Owner”) at the Geneva branch of 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 Claimants submitted three Claim Forms identifying the Account Owner as their relative, Naftali Hirsch Parnes (also known as Herman), who was born in 1910 in Sanok, Poland. The Claimants indicated that Naftali Hirsch Parnes was the son of Yehuda Leib Parnes and Gitel Ruchel Parnes, née Gewirtz. Claimant Lanner indicated that the Account Owner was the brother of Israel Parnes and of her father, Binem Mendel Parnes. Claimant Parnes stated that Israel Parnes, Naftali’s brother, is her late husband. During a phone conversation with the CRT, Claimant Lanner indicated that approximately in 1928 her uncle moved from Poland to live with her family in Essen, Germany. She further indicated that when the Nazis came to power in Germany in 1933, her father’s and uncle’s property was looted and confiscated, and that they were forced to flee Germany. According to the Claimants, Naftali Hirsch Parnes escaped to Lille, France, and in 1934 to Barcelona, Spain, where he resided with Claimant Lanner’s family in Calle Montanaire. The Claimants identified Naftali Hirsch Parnes as a businessman. Claimant Lanner asserted that he frequently traveled to Switzerland, and that in Geneva he was assisted by and had business with Max Klopper, a close friend of Claimant Lanner’s father. She

¹ The Claimant Lanner submitted an additional claim to the account of her parents, Binem Mendel and Malka Parnes, which is registered under the claim number 211850. The CRT will treat the claim to this account in a separate decision.

also indicated that according to her uncle, he deposited assets in the Geneva branch of the Bank. The Claimants further stated that Naftali Hirsch Parnes died in Spain in 1941 or 1942. They indicated that he did not marry or have children. Finally, Claimant Lanner indicated that she was born on 24 October 1921 in Essen, Germany, and Claimant Parnes stated that she was born on 10 June 1921 in Lwów, Poland.

Israel Parnes, Claimant Parnes' late husband, previously submitted an Initial Questionnaire with the Court in 1999, asserting his entitlement to a Swiss bank account owned by his brother, Herman Parnes.

Information Available in the Bank Records

The bank records consist of extracts from a suspense account ledger. According to these records, the Account Owner was Naftali Hirsch Parnes. The account was transferred to a suspense account on 22 May 1951 and closed on 14 October 1953, when the amount in the account was 175.00 Swiss Francs. The bank records do not show the type of the account at issue, or to whom it was paid. 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") indicated that there was no evidence of activity on this account after 1945. 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 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 three claims of the Claimants in one proceeding.

Identification of the Account Owner

The Claimants has plausibly identified the Account Owner. The name of their relative matches the published name of the Account Owner. The Claimant Lanner identified the bank and the branch, in which the account at issue was held, which matches unpublished information about the Account Owner contained in the bank records.

The CRT notes that Israel Parnes, Claimant Parnes' late husband, filed an Initial Questionnaire with the Court in 1999, asserting his entitlement to a Swiss bank account owned by his brother, Herman Parnes, 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 Israel Parnes has based his 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 his brother,

but rather on a direct family relationship that was known to him before the publication of the ICEP List. It also indicates that Israel Parnes had reason to believe that his brother owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by Claimant Parnes.

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 and that he escaped from Germany due to Nazi persecution.

The Claimants' Relationship to the Account Owner

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

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 in this case Presumptions (h) and (j) apply, 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 Claimants. First, the claim is admissible in accordance with the criteria contained in Article 23 of the Rules. Second, Claimant Lanner has plausibly demonstrated that the Account Owner was her uncle, and Israel Parnes, Claimant Parnes' husband, has plausibly demonstrated that the Account Owner was his brother, and these relationships justify 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

The bank records indicate that the value of the account as of 22 May 1951 was 175.00 Swiss Francs. In accordance with Article 37(1) of Rules, this amount is increased by an adjustment of 105.00 Swiss Francs, which reflects standardized bank fees charged to the account between 1945 and 22 May 1951. Consequently, the adjusted balance of the account at issue is 280.00 Swiss Francs. According to Article 35 of the Rules, if the amount in an account of unknown type was less than 3,950.00 Swiss Francs, and in the absence of plausible evidence to the contrary, the amount in the account shall be determined to be 3,950.00 Swiss Francs. The present value of the amount of the award is determined by multiplying the balance as determined by Article 35 by a

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 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 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

The CRT concludes that Claimant Parnes' claim is a continuation of the aforementioned Initial Questionnaire, made by her late husband, Israel Parnes. Therefore, and in accordance with the provisions of Article 29 of the Rules, each of the Claimants is entitled to one half of any payment hereunder.

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).