

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants [REDACTED 1] and [REDACTED 2]

in re Account of Hans Perl and Arthur Perl

Claim Numbers: 213495/SA; 213759/SA; 217129/SA; 217144/SA

Award Amount: 47,400.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”) and [REDACTED 2] (“Claimant [REDACTED 2]”) (together the “Claimants”) to the accounts of Hans Perl (“Account Owner Hans Perl”) and Arthur Perl (Account Owner Arthur Perl”) (together 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 Claimants

The Claimants submitted Claim Forms and Initial Questionnaires identifying the Account Owners as their cousins: Hans (Jan) Perl, who was born in 1910, and his brother Arthur Perl, who was born around 1907 or 1909. The Claimants indicated that Hans Perl and Arthur Perl, who were Jewish, were from Bielsko-Biala, Poland, and their father, [REDACTED], was the brother of the Claimants’ paternal grandfather, [REDACTED], a dentist who immigrated in the 1880s to Chicago, Illinois, where the family name was changed to [REDACTED].

According to the Claimants, their grandfather sent money to Switzerland in the 1930s for the benefit and protection of the Perl family due to the rising Nazi threat and to help Hans and Arthur Perl, whose father died in 1922 and whose mother was ill. The Claimants stated that this money was not immediately accessed because it was considered to be safe in Switzerland and would therefore always be available. According to the Claimants, after the outbreak of the Second World War, Hans and Arthur Perl fled Nazi-controlled Poland for the Soviet Union, where they labored in a refugee camp for the duration of the war. After the war they returned to Poland, as the sole surviving members of the Perl family, most of whom perished in concentration camps. The Claimants further indicated that Hans and Arthur Perl were never able to retrieve the money in Switzerland because the Bank turned them away at each attempt.

According to the Claimants, Arthur Perl immigrated in 1950 via Israel to South Africa, where he died in the 1950s, and Hans Perl immigrated via Israel to Australia, where he died in 1995.

The Claimants submitted signed correspondence received from Hans Perl in Australia between 1986 and 1994, in which he discusses his family's wartime experiences, his familial relationship to the Claimants and the existence of a Swiss account belonging to him and his brother Arthur Perl. The Claimants also submitted a birth certificate, dated 1913, and a death certificate, dated 1991, of their father, [REDACTED]; a death certificate, dated 1944, of their grandfather, [REDACTED]; and a death notice, dated 1906, for their great-grandmother, [REDACTED], which lists [REDACTED] and "[REDACTED]" among her surviving children.

Claimant [REDACTED 1] stated that he was born on 27 May 1950 in Chicago. Claimant [REDACTED 2] stated that he was born in 1951 in Chicago.

The Claimants previously submitted Initial Questionnaires with the Court in 1999 asserting their entitlement to a Swiss bank account owned by Hans Perl and Arthur Perl.

Information Available in the Bank Records

The bank records consist of a power of attorney agreement signed in Bielsko, Poland, on 30 July 1934, and printouts from the Bank's database. According to these records, Hans Perl and Arthur Perl, who resided at Blichowa 42, in Bielsko, Poland, were the Account Owners of an account of unknown type, and their mother, Frieda Perl, who resided at the same address, was the Power of Attorney Holder. This record bears the signatures of the Account Owners and of the Power of Attorney Holder.

The bank records do not 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, the Power of Attorney Holder, or their 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, as amended (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 four claims of the Claimants in one proceeding.

Identification of the Account Owners

The Claimants have plausibly identified the Account Owners. The names of their cousins match the separately published names of the Account Owners. The Claimants identified the relationship of the Account Owners as brothers, which matches unpublished information about the Account Owners contained in the bank records. The Claimants also submitted correspondence received from Account Owner Hans Perl prior to his death in 1995, in which he asserts the existence of a Swiss account under his name and the name of his brother, Arthur Perl. Furthermore, Hans Perl's signature, contained in the correspondence submitted by the Claimants, matches the signature contained in the bank records.

The CRT notes that the Claimants previously filed Initial Questionnaires with the Court in 1999, asserting their entitlement to a Swiss bank account owned by Hans Perl and Arthur Perl, 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 individuals identified on the ICEP List as owning a Swiss bank account bear the same names as their relatives, but rather on direct family relationships that were known to them before the publication of the ICEP List. It also indicates that the Claimants had reason to believe that their relatives owned a Swiss bank account prior to the publication of the ICEP List. This supports the credibility of the information provided by the Claimants.

Status of the Account Owners as Victims 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, that most of their family perished during the Holocaust, and that they fled from the Nazis to the Soviet Union.

The Claimants' Relationship to the Account Owners

The Claimants have plausibly demonstrated that they are related to the Account Owners by submitting documents demonstrating that their paternal grandfather was the paternal uncle of the Account Owners. There is no information to indicate that the Account Owners have other surviving heirs.

The Issue of Who Received the Proceeds

Given the application of Presumptions (e), (h), (i) and (j) as provided in 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 Owners, the Power of Attorney Holder 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 Claimants. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owners were their cousins, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owners, the Power of Attorney Holder nor their heirs received the proceeds of the claimed account.

Amount of the Award

In this case, the Account Owners held one account of unknown type. 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 investigation carried out pursuant to the instructions of the ICEP, 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 of the Rules, if neither the Account Owner's spouse nor any descendants of the Account Owner have submitted a claim, the award shall be in favor of any descendants of the Account Owner's parents who have submitted a claim, in equal shares of representation. Therefore, in this case, each Claimant is entitled to one-half of the total 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 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
April 1, 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).