

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants Juliana Pollak, Ille Gheorghina and Maria Paulina Bogdan

in re Account of Alexander Pollak, Josef Pollak and Stephan Pollak

Claim Numbers: 204223/MO, 205182/MO, 205183/MO, 212682/MO, 212684/MO,
212733/MO¹

Award Amount: 275,592.00 Swiss Francs

This Certified Award is based upon the claim of Juliana Pollak (“Claimant Pollak”), Ille Gheorghina, née Pollak, (“Claimant Gheorghina”) and Maria Paulina Bogdan, née Pollak, (“Claimant Bogdan”) (together the “Claimants”) to the account of Alexander Pollak, Josef Pollak and Stephan Pollak (the “Account Owners”) at the Zurich 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 Claimants

The Claimants submitted Claim Forms identifying the Account Owners as their paternal grandfather, Alexander Simon Pollak, and his two sons, the Claimants’ fathers, Josef Pollak and Dr. Stefan Pollak. The Claimants indicated that their grandfather was born on 26 August 1877 in Arad, Romania, and was married to Paulina Pollak, née Brandeisz, on 26 December 1905 in Simand, Romania. The Claimants further indicated that their grandfather was the son of Josif Pollak and Juliana Pollak, née Brandeisz, and that he resided in Arad, from 1920 to 1925 at A. Muresanu 14, from 1925 to 1940 at Gh. Lazar 23, and from 1941 to 1951 at T. Vladimirescu 12. The Claimants identified their grandfather as the owner of two factories: *Caramidaria*, located at Câmpul Lini°tii 9, Arad, which manufactured tiles and brick; and *Industria Oxigenului*, based in Rue Aurel Vlaicu, Arad. Furthermore, the Claimants stated that their grandfather had two sons: Josif (Josef) Pollak, Claimant Gheorghina’s father, who was born on 11 February 1907 in Arad; and Stefan Pollak, the father of Claimant Pollak and Claimant Bogdan, who was born in Arad on 8 June 1908. The Claimants indicated that their grandfather, who was Jewish, was subject to

¹ The Claimants submitted 24 Claim Forms, which were registered under the Claim Numbers 201058, 201062, 203712, 203713, 204222, 204223, 205180, 205181, 205182, 205183, 205701, 205702, 212682, 212683, 212684, 212685, 212731, 212732, 212733, 212734, 218881, 218882, 218883 and 218884. The CRT has determined that these claims are duplicate claims and is treating them under the consolidated Claim Numbers 204223, 205182, 205183, 212682, 212684 and 212733.

Nazi racial persecution and that in 1943 he was deported to Transnistria. The Claimants stated that their grandmother died in Arad on 19 January 1941 and that their grandfather died there on 19 January 1951.

Claimant Gheorghina stated that her father, Josif Pollak, worked for his father's companies and was the technical director of *Industria Oxigenului*. According to Claimant Gheorghina, her father married Aranka Pollak, née Simen, on 27 June 1946 in Arad, where he resided until his death on 3 February 1986. She asserted that her father, who was Jewish, was interned in 1939 in a slave labor camp in Targu Jiu and from 1943 to 1944 in a concentration camp in Transnistria. She also stated that between 1941 and 1943 all her father's property was nationalized by the pro-Nazi regime in Romania. Claimant Gheorghina indicated that she was born on 23 April 1947 in Arad.

Claimants Pollak and Bogdan identified their father, Stephan Pollak, as a doctor of medicine, who married Elisabeta Pollak, née Martonfi, on 27 May 1943 in Arad, Romania. Claimant Bogdan asserted that her father worked at the *Hôpitaux et Asiles Civiles* in Paris from 1932 to 1935, when he returned to Arad. She indicated that upon the adoption of anti-Jewish legislation in Romania, her father was prohibited from practicing medicine and his property was nationalized by the Romanian Regime. According to Claimants Pollak and Bogdan, their father resided in Arad until 1949, in Ineu, Romania, until 1980, and again in Arad until his death on 4 October 1996. Claimant Pollak indicated that she was born on 18 February 1944 in Arad and the Claimant Bogdan was born there on 15 January 1948.

In support of their claims, the Claimants submitted various documents, including copies of their, their grandparents' and their fathers' birth certificates and their grandparents' and parents' marriage certificates and death certificates. The Claimants also submitted copies of their grandfather's and fathers' inheritance certificates and related documentation.

Information Available in the Bank Records

The bank records consist of a central registry card, an extract from a suspense account ledger and a printout from the Bank's numbered accounts database. According to these records, the Account Owners were Alexander Pollak, who resided in Arad, Romania, Josef Pollak, and Dr. Stephan Pollak, all of Romanian nationality. The bank records indicate that the Account Owners held an account of an unknown type, numbered 3150, and that the Bank was instructed to hold all correspondence to the Account Owners. The bank records do not show when this account was opened; however, the records indicate that the account was transferred to a suspense account on 7 June 1949 and that it was closed in June 1956. The amount in the account on the date of its transfer was 22,641.00 Swiss Francs. The bank records do not show to whom the account at issue was paid. 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 names of their grandfather and their fathers match the published names of the Account Owners. The Claimants identified their grandfather’s city of residence, which matches published information about the Account Owners contained in the bank records. The Claimants also identified the relationship between the Account Owners and Stephan Pollak’s professional title, which match unpublished information about the Account Owners.

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. They indicated that Alexander Pollak and Josef Pollak were deported to Transnistria and that the Account Owners’ property was nationalized.

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 the Account Owners were their grandfather and fathers. There is no information to indicate that the Account Owner has other surviving heirs.

The Issue of Who Received the Proceeds

Given that the account was transferred to a suspense account in June 1949 and closed in 1956, and given the application of Presumptions (b), (h), (i), and (j) contained in Appendix A², the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owners 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 23 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owners were their grandfather and their fathers, and that relationship justifies 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 account.

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

Amount of the Award

The bank records indicate that the value of the account as of 7 June 1949 was 22,641.00 Swiss Francs. In accordance with Article 37(1) of the Rules, this amount is increased by an adjustment of 325.00 Swiss Francs, which reflects numbered account fees and standardized bank fees charged to the account between 1945 and 7 June 1949. Consequently, the adjusted balance of the account at issue is 22,966.00 Swiss Francs. The present value of the amount of the award is determined by multiplying the adjusted balance by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount of 275,592.00 Swiss Francs.

Division of the Award

According to Article 31 of the Rules, if an account is a joint account and claimants related to each of the account owners have submitted claims to the account, it shall be presumed that each account owner was the owner of an equal share of the account. The CRT therefore presumes that each of the Account Owners was the owner of one-third of the account at issue. According to Article 29 of the Rules, Claimant Gheorghina is entitled to her father's third of the account, and Claimants Pollak and Bogdan are entitled to their father's third of the account, in equal shares. Furthermore, according to Article 29 of the Rules, Claimant Gheorghina is entitled to receive one-half of her grandfather's third of the account, and Claimants Pollak and Bogdan are entitled to receive the other one-half, in equal shares. Consequently, Claimant Gheorghina receives one-half of any payment made hereunder and Claimants Pollak and Bogdan each receive one-fourth of any payment made 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

January 28, 2003

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).