

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

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

in re Accounts of Margrit Pollak and Leo Pollak

Claim Numbers: 223312/AH; 223314/AH¹

Award Amount: 181,680.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the accounts of Leo Pollak (“Account Owner Leo Pollak”) and Margrit Pollak (“Account Owner Margrit Pollak”) (together the “Account Owners”) at the Basel 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 Claimant

The Claimant submitted two Claim Forms identifying Account Owner Leo Pollak as his maternal great-uncle, Leo Pollak, who was born on 15 August 1882 in Iglau, Jihlava, Czechoslovakia, and was married on 30 August 1922, in Vienna, Austria, to Margrit Pollak, née [REDACTED], who was born on 5 July 1896, in Vienna. The Claimant stated that his great-uncle, who was Jewish, lived at 67 Rue da la Gare, in Vincennes, France in 1923, he and in 1931 moved to 103 Grand Rue, Maisons-Alfort (Seine), France. In 1935, he moved to 103 Rue Jean Jores in Maisons-Alfort, and around 1940, he and his wife moved in with her parents at 30 Avenue d'Eylau, 16eme, Paris, France, where they were captured by the Nazis and deported to Birkenau. Leo and Margrit Pollak died in Birkenau in November and August 1942, respectively, without issue. The Claimant indicated that his great-uncle lived and worked in Maisons-Alfort between 1931 and 1940, brought the Claimant's mother to France, and acted as her father. The Claimant indicated that his great-uncle had connections to Basel, Switzerland. In a telephone conversation with the CRT on 19 June 2002, the Claimant stated that his great-uncle had

¹ The Claimant submitted six additional claims to the accounts of [REDACTED], [REDACTED], [REDACTED], [REDACTED], [REDACTED] and [REDACTED], which are registered under the claim numbers 223313, 223315, 223316, 223317, 223318 and 223319. The CRT will treat the claims to these accounts in separate decisions.

fourteen siblings, but since the Claimant learned of the existence of the CRT only 14 days before the last date to submit claims, he was able to find information regarding only eight of Leo Pollak's siblings. The Claimant submitted the inheritance documents of Leo Pollak dated 12 and 19 February 1954, naming the Claimant's mother as one of his six heirs. The Claimant stated that all of Leo Pollak's heirs had passed away over the years, and that after his mother's death in 1998, he and his brothers are his great-uncle's and aunt's only surviving heirs. The Claimant submitted various documents including birth certificates of Leo Pollak, his brother [REDACTED], and [REDACTED]'s daughter, [REDACTED], the Claimant's mother, a family book of [REDACTED], the marriage certificate of Leo and Margrit Pollak indicating that Leo Pollak was an engineer, a postcard dated 1 April 1931, indicating their address in Maisons-Alfort, and the death certificate of Margrit Pollak. The Claimant indicated that he was born on 25 May 1943 in Antibes, France and that he is representing his brother, [REDACTED], born on 8 September 1944, in Carmaux, France, his other brother, [REDACTED], born on 17 July 1946, and his sister, [REDACTED], born on 21 October 1948, in Boulogne, Billancourt, France.

Information Available in the Bank Record

The bank record consists of a printout from the Bank's database. According to this record, the Account Owners were Margrit Pollak and Ing. Leo Pollak, who both resided at Maisons-Alfort (Seine), France. The bank record indicates that Account Owners jointly held a demand deposit account and a custody account, numbered 38189, which were opened on 25 November 1932. The accounts were closed unknown by whom at an unknown date. The amounts in the accounts on the dates of their closures are unknown. 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 these accounts in the Bank's system of open accounts, and they therefore presumed that they were closed. These auditors indicated that there was no evidence of activity on these accounts after 1945. There is no evidence in the bank record that the Account Owners or their heirs closed the accounts 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 same or related accounts may be joined in one proceeding at the CRT's discretion. In this case, the CRT deems it appropriate to join the two claims of the Claimant in one proceeding.

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. His great-uncle's and great-aunt's names match the published names of the Account Owners. The Claimant also identified his great uncle's profession, which matches unpublished information about Account Owner Leo Pollak's profession. The Claimant also indicated that his great-uncle had a connection to Basel, and the

CRT notes that the account was opened at the Basel branch of the Bank. The CRT notes that although the names of the Account Owners were published separately, the Claimant identified the connection between them. The Claimant demonstrated by documents both his great-uncle's and great-aunt's city and country of residence, which matches published information about the Account Owners contained in the bank records. The CRT notes that the period in which the Claimant's great-uncle and great-aunt resided in Maisons-Alfort matches the unpublished date in which the Account Owners opened the accounts, using the same address. In support of his claim, the Claimant submitted various documents, including birth and marriage certificates of Leo Pollak, indicating that he was an engineer, a postcard dated 1 April 1931, indicating their address in Maisons-Alfort, and the death certificate of Margrit Pollak.

Status of the Account Owners as Victims of Nazi Persecution

The Claimant has made a plausible showing that the Account Owners were Victims of Nazi Persecution. The Claimant stated that the Account Owners, who were Jewish, were deported from their home and were killed in 1942 in Birkenau.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that he is related to the Account Owners by submitting documents including the birth certificates of his great-uncle, his grandfather, and his mother, and an extended family tree and family book demonstrating that the Account Owners are his maternal great-uncle and great-aunt.

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 with respect to the accounts at issue, Presumptions (h) and (j) apply and it is therefore plausible that the account proceeds were not paid to the Account Owners or their heirs.

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 23 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owners were his great-aunt and great-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 accounts.

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

Amount of the Award

Pursuant to Article 35 of the Rules, when the value of an account is unknown, as is the case here for both of the accounts at issue, 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 and the average value of a demand deposit was 2,140.00 Swiss Francs. The total 1945 value is therefore 15,140.00 Swiss Francs. The present value of this amount of each account is calculated by multiplying it by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount of 181,680.00 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 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.

Division of the Award

The Claimant is representing his two brothers and his sister in these proceedings. According to the principles of distribution set forth in Article 29 of the Rules, an Award will provide for an equal division among the children of the Account Owner's parents or their descendants who have submitted claims to the account. Therefore the Claimant's three siblings are each entitled to receive one-quarter of any payment made to the Claimant.

Scope of the Award

The Claimant should be aware that, pursuant to Article 25 of the Rules, the CRT will carry out further research on his claim to determine whether there are additional Swiss bank accounts to which he 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
October 24, 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).