

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Elizabeth [REDACTED]

in re Accounts of Dr. Friedrich Pollatschek and Elizabeth Pollatschek

Claim Number: 219873/AA¹

Award Amount: 337,680.00 Swiss Francs

This Certified Award is based upon the claim of Elizabeth [REDACTED], née Lederer (the “Claimant”) to the accounts of [REDACTED].² This Award is to the unpublished accounts of Dr. Friedrich Pollatschek (“Account Owner Dr. Friedrich Pollatschek”) and Elizabeth Pollatschek (“Account Owner Elizabeth Pollatschek”) (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 a Claim Form identifying the Account Owners as her late husband, Friedrich Pollatschek, and herself. The Claimant submitted information showing that she and Friedrich Pollatschek were married in Aussig, Germany on 8 March 1927 and they had two children, [REDACTED], who was born in 1929, and [REDACTED], who was born in 1932. The Claimant stated that her late husband was Jewish and that her father, [REDACTED], was Jewish. According to the Claimant, her husband was an attorney, and in 1938, she, her husband, and children fled Czechoslovakia to escape persecution. The Claimant stated that, during the Second World War, her brother, Wilhelm Lederer, was arrested by the Gestapo and was forced to leave his job. The Claimant stated that her husband died in 1967. The Claimant also stated that her brother, Wilhelm Lederer was born on 9 March 1901 in Usti Nad Labem (also known as Aussig), Czechoslovakia and died on 24 May 1971 in Munich, Germany. In support of her claim, the Claimant submitted her marriage certificate, her husband’s birth certificate, and a copy of an affidavit certifying their change of last name from Pollatschek to [REDACTED]. The

¹ The Claimant submitted an additional claim to the account of [REDACTED], which is registered under the claim number 219874. The CRT will treat the claim to this account in a separate decision.

² The CRT will treat the claim to this account in a separate decision.

Claimant indicated that she was born on 4 February 1902 in Usti Nad Labem and resides in California, the United States today.

Information Available in the Bank Records

Account Owner Friedrich Pollatschek

The bank records consist of Power of Attorney forms and printouts from the Bank's database. According to these records, the Account Owner was Dr. Friedrich Pollatschek of Aussig, Czechoslovakia, and the Power of Attorney Holders were Elizabeth Pollatschek, née Lederer, and Dr. Wilhelm Lederer. The bank records indicate that Account Owner Dr. Friedrich Pollatschek held a custody account, numbered 35366, and a demand deposit account. The bank records do not show when the accounts at issue were opened or closed, or to whom they were paid, nor do these records indicate the value of these accounts. The records show that the Account Owner granted Power of Attorney to the accounts on 4 October 1937.

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 records that the Account Owner, the Power of Attorney Holders, or their heirs closed the accounts and received the proceeds themselves.

Account Owner Elizabeth Pollatschek

The bank records consist of Power of Attorney forms and printouts from the Bank's database. According to these records, the Account Owner was Elizabeth Pollatschek, née Lederer, of Aussig, Czechoslovakia, and the Power of Attorney Holders were Dr. Friedrich Pollatschek and Dr. Wilhelm Lederer. The bank records indicate that the Account Owner held a custody account, numbered 38198. The bank records do not show when the account at issue was opened or closed, or to whom it was paid, nor do these records indicate the value of this account. The records show that the Account Owner granted Power of Attorney to the account on 4 October 1937.

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 Owner, the Power of Attorney Holders, or their heirs closed the account and received the proceeds themselves.

The CRT's Analysis

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. Her name and her late husband's name match the unpublished names of the Account Owners and the Power of Attorney Holders. In addition, the Claimant identified her husband's occupation as an attorney, which is consistent with the unpublished title held by Account Owner Dr. Friedrich Pollatschek as shown in the bank records. The Claimant also stated that her maiden name was Lederer and that she and her husband were from Aussig, Czechoslovakia, which matches unpublished information about the Account Owners contained in the bank documents.

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 Account Owner Dr. Friedrich Pollatschek was Jewish and her father was Jewish, and that she and her husband and children fled Czechoslovakia during the Second World War.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is one of the Account Owners and that her husband was the other Account Owner. The CRT notes that Account Owner Dr. Friedrich Pollatschek has two children, who would be entitled to a portion of the award to his accounts, but as of the date of this award, there are no other claims to his accounts.

The Issue of Who Received the Proceeds

Given the application of Presumptions (h) and (j) contained in Appendix A,³ the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owners, the Power of Attorney Holders, or their heirs. Based on its precedent and the Rules Governing the Claims Resolution Process (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 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 she was one of the Account Owners, and her late husband was the other Account Owner, and those relationships justify an Award. Finally, the CRT has determined that it is plausible that neither the Account Owners, the Power of Attorney Holders, nor their heirs received the proceeds of the claimed accounts.

³ 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, 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 Independent Committee of Eminent Persons (“ICEP” or the “ICEP Investigation”), in 1945 the average value of a custody account was 13,000.00 Swiss Francs, and the value of a demand deposit account was 2,140.00 Swiss Francs, which makes a total of 28,140.00 Swiss Francs for Account Owner Dr. Friedrich Pollatschek’s custody account and demand deposit account and for Account Owner Elizabeth Pollatschek’s custody account. The present value of this amount is calculated by multiplying by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount of 337,680.00 Swiss Francs.

Initial Payment

In this case, the Claimant is age 75 or older and is therefore entitled to receive 100% of the total award amount.

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 her claim to determine whether there are additional Swiss bank accounts to which she 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

November 26, 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).