

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Account of Rudolf Pordes

Claim Number: 223631/MC

Award Amount: 359,400.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED] (the “Claimant”) to the account of Rudolf Pordes (the “Account Owner”) 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 Claimant

The Claimant submitted a Claim Form identifying the Account Owner as his first cousin twice removed, Rudolf Pordes, who was the son of his great-grandfather’s brother. The Claimant indicated that his great-grandfather was [REDACTED]. The Claimant stated that his cousin was Jewish and was born on 24 September 1895 in Poland. The Claimant further stated that his cousin’s entire family moved to Vienna, Austria, at the end of the nineteenth century, where they ran various businesses, including jewelry shops and automobile manufacturing. The Claimant stated that his relative’s family traveled to resorts in Switzerland and deposited their assets in Swiss banks. The Claimant stated that because his cousin’s family had both Polish and Austrian citizenship, they were able to settle and work in Vienna until 1938 or 1939. The Claimant stated that he was not certain about what happened to his cousin during the Second World War. The Claimant indicated that his great-grandfather, grandmother, and aunt were able to flee from the Nazis and escape to England. The Claimant indicated that his cousin Rudolf Pordes had a son, [REDACTED], who was born on 4 February 1907, but he did not provide any information as to [REDACTED]’ fate during the War. The Claimant stated that he is the son of [REDACTED]and [REDACTED], née [REDACTED], and that he was born in London, England on 27 September 1946.

In support of his claim, the Claimant has submitted copies of his mother's birth certificate, his grandmother's death certificate, and a detailed family tree which describes his family relationships.

Information Available in the Bank Records

The bank records consist of an extract from a list of accounts repatriated to Austria and printouts from the Bank's database. According to these records, the Account Owner was Rudolf Pordes from Vienna, Austria. The bank records indicate that the Account Owner held three accounts. The extract from the list of repatriated accounts indicates that Rudolf Pordes held an account of unknown type, numbered 61624, and that he used a Zurich address for the account. That record indicates that the account was repatriated to the *Reichsbank* in Vienna on 19 May 1938. The balance of the account at the time of repatriation is not indicated. 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") determined that the amount in the account had been paid to the Nazi authorities.

One printout from the Bank's database indicates that Rudolf Pordes held a custody account numbered 29111 that was opened on 26 October 1929. That record indicates that the Account Owner resided at Weimarerstrasse 43 in Vienna XVIII. The bank record does not indicate when the account at issue was closed, or to whom it was paid, nor does this record indicate the value of this account. The auditors who carried out 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.

Another printout from the Bank's database indicates that Rudolf Pordes held a custody account numbered 36478 that was opened in 1933 and was closed on 21 January 1942. The record indicates that the Account Owner was professionally associated with a fashion publishing house named "*Movag Modeverlag AG*" in Zurich. The bank record does not indicate to whom the account was paid, nor does this record indicate the value of the account. There is no evidence in the bank records that the Account Owner or his heirs closed either of the custody accounts and received the proceeds themselves.

Information Available from the Austrian State Archives

By decree on 26 April 1938, the Nazi Regime required Jews residing within Austria who held assets above a specified level to submit a census form registering their assets. In the records of the Austrian State Archives (Archive of the Republic, Finance), there are documents concerning the assets of Rudolf Pordes. These records include an Austrian census form for Rudolf Pordes, numbered 25735, which is dated 15 July 1938. These records indicate that Rudolf Pordes was Jewish, that he was born on 24 September 1895, and that he was married to [REDACTED], née [REDACTED]. The records indicate that Rudolf Pordes resided at Weimarerstrasse 43 in Vienna XVIII, Austria, as well as at Ferrogasse 35 in Vienna XVIII, and that he was the former Director of a fashion publishing house and a clerk of a private organization ("*Privatbeamter*"). The records also indicate that Rudolf Pordes owned several stocks and bonds in domestic and

foreign companies, including two Swiss companies. The census records contain no information regarding accounts held in Swiss banks.

The CRT's Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. The name of his cousin matches the published name of the Account Owner. Even though the residence of the Account Owner was published as Zurich, Switzerland, the Claimant correctly identified his cousin as an Austrian citizen, which matches unpublished information about the Account Owner contained in the bank records. In addition, the date of birth identified for Rudolf Pordes in the Austrian census records matches that of the Claimant's cousin. In turn, the information about Rudolf Pordes' address and profession contained in the Austrian census records matches unpublished information about the Account Owner contained in the bank documents. The CRT notes that there are no other claims to this account.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimant has made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimant stated that the Account Owner was Jewish, and the Account Owner's family remained in Austria until 1938 or 1939. Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Rudolf Pordes, who lived in Vienna, Austria. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The Claimant's Relationship to the Account Owner

The Claimant has demonstrated that he is related to the Account Owner by submitting a family tree, which shows that the Account Owner was the son of the Claimant's great-grandfather's brother.

The Issue of Who Received the Proceeds

Regarding the account of unknown type, the bank record indicates that the account was transferred to the Nazi authorities.

Regarding the custody account numbered 29111, given the application of Presumptions (f), (h) and (j) contained in Appendix A,¹ the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner his 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.

¹ An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

Regarding the custody account numbered 36478, given the application of Presumptions (a), (f), and (j) contained in Appendix A,² the CRT concludes that it is plausible that the account proceeds were not paid to the Account Owner his 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 the Account Owner was his first cousin twice removed, and that relationship justifies an Award. Finally, the CRT has determined that neither the Account Owner nor his heirs received the proceeds of the claimed account.

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 ICEP Investigation, in 1945 the average value of an account of unknown type was 3,950.00 Swiss Francs and the average value of a custody account was 13,000.00 Swiss Francs. The total unadjusted value of the three accounts is therefore 29,950.00 Swiss Francs. The present value of this amount 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 359,400.00 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 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 233,610.00 Swiss Francs.

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).

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

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).