

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Dr. Hans Schapire

in re Accounts of Dr. Bernhard Schapira and Dr. Saul Schapira

Claim Number: 204923/AA

Award Amount: 331,920.00 Swiss Francs

This Certified Award is based upon the claim of Dr. Hans Schapire (the “Claimant”) to the accounts of Dr. Bernhard Schapira and Dr. Saul Schapira (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 Claimant

Account Owner Bernhard Schapira

The Claimant submitted a Claim Form identifying Account Owner Bernhard Schapira as his father, who was born on 21 January 1880 in Tarnopol, Poland, and was married to Olga Stransky in 1909 in Vienna, Austria. The Claimant stated that he is the son of the Account Owner, and that he was born in Vienna on 26 August 1914. The Claimant further stated that he has a sister, Franzi Schapira [REDACTED], who was born in Vienna on 28 December 1909. The Claimant explained that his father was an attorney at Graben 29A in Vienna. According to the Claimant, as a result of the Nazi annexation of Austria (the “*Anschluss*”) in March 1938, his father was not allowed to continue practicing as an attorney in Vienna. Subsequently, during *Kristallnacht*, the Nazis arrested his father, but they released him after detaining him for two days. The Claimant explained that by 1941 both of his parents’ names were on a list to be deported to the east, but his sister was able to secure visas for them to Cuba before they could be deported. Accordingly, in December 1941, the Claimant’s parents were able to flee Austria to St. Lazaro in Havana, Cuba. After two years in Cuba, according to the Claimant, his parents were admitted to the United States, where they remained financially dependent on both the Claimant and his sister. In support of his claim, the Claimant submitted his birth certificate, his parents’ marriage certificate, and his father’s death certificate.

Account Owner Saul Schapira

According to the Claimant, Saul Schapira was his father's brother and was married to [REDACTED]. The Claimant stated that his uncle was an attorney who practiced law and lived in Vienna at the time of the *Anschluss*. The Claimant further stated that his uncle was unable to flee Austria and was deported in approximately 1941, and he probably perished soon thereafter. In support of his claim, the Claimant provided information and submitted his birth certificate indicating that he changed the spelling of his last name from "Schapira" to "Schapire."

Information Available in the Bank Records

Account Owner Bernhard Schapira

The bank record consists of an account opening card. According to this record, the Account Owner was Dr. Bernhard Schapira, an attorney, who resided at Graben 29A, Vienna, Austria, and the Power of Attorney Holders were Frau Olga Schapira, Hans Schapira, and FrI. Franzi Schapira, the Account Owner's wife and children, respectively. The bank record indicates that the Account Owner held two accounts: a custody account numbered 33690 that was closed on 30 August 1940, and a savings account that has no recorded closing date. The bank record does not indicate the value of the custody account, nor does it show if or to whom the account was paid. The account opening card indicates the last known contact with the Account Owner regarding his custody account was on 9 April 1938, when he requested a hold on his mail. Approximately two years later, on 30 August 1940, the custody account was closed.

In regard to the savings account held by Bernhard Schapira, the bank record does not indicate if or 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 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 record that Account Owner Bernhard Schapira or his heirs closed either account and received the proceeds themselves.

Account Owner Saul Schapira

The bank record consists of an account opening card. According to this record, the sole Account Owner was Dr. Saul Schapira who resided at Mariannengasse 25, Vienna, Austria. A power of attorney was granted on 22 May 1934 to Dr. Bernhard Schapira, the Account Owner's brother. The bank records indicate that the Account Owner held two accounts, a custody account numbered 37629 and a savings account. The bank records do not contain the value of either of the accounts held, and they do not show if or to whom the accounts were paid. The custody account opening card records that the last known contact with the Account Owner was on 23

May 1934 when he requested a hold on his mail. A notation on the account opening card indicates that the custody account was closed on 14 October 1940.

Regarding the savings account held by Saul Schapira, the bank records do not indicate if or when the account at issue was closed, or to whom it was paid, nor do these records 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) 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 record that Account Owner Saul Schapira or his heirs closed either account 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 Dr. Bernhard Schapira. These records include an Austrian census form with attachments, numbered 2473, and dated 28 June 1938. These records indicate that Dr. Bernhard Schapira was Jewish, was born on 21 January 1880, was an attorney by profession, and was married to Olga Schapira, née Stransky. The Austrian census records show that Dr. Bernhard Schapira used an address at Liechtensteinstrasse 32 in Vienna IX, Austria as his private residence, and Graben 29a in Vienna I as his business address. The records also show that Dr. Bernhard Schapira owned stocks and bonds in foreign and domestic companies, including some Swiss companies, totaling 9,852.35 Reichsmarks (1938 value), and that his office operating assets totaled 2,490.90 Reichsmarks (1938 value). The census records do not mention assets held in a Swiss bank account.

The CRT's Analysis

Identification of Account Owners

The Claimant has plausibly identified the Account Owners. Their names match the published names of the Account Owners. The Claimant submitted information, supported by his birth certificate, indicating that he changed the spelling of his last name from "Schapira" to "Schapire." Additionally, the Claimant provided his father's precise street address in Vienna before the Second World War, which matches the unpublished address contained in the bank documents for Account Owner Bernhard Schapira. Moreover, the names of the Claimant, his mother and his sister are recorded as holders of power of attorney to the account. For his uncle's account, the Claimant has presented information regarding his uncle's profession and city of residence in Vienna before the Second World War, which is consistent with Account Owner Saul Schapira's unpublished title and domicile information contained in the bank documents.

Status of 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 were Jewish and were persecuted by the Nazis while living in Austria until 1941. Specifically, in March 1938, his father was prohibited from practicing as an attorney and was arrested by the Nazis during *Kristallnacht*. According to the Claimant, in 1941 his uncle was deported by the Nazis and subsequently perished.

The Claimant's Relationship to the Accounts Owners

The Claimant has plausibly demonstrated that he is related to the Account Owners by submitting documents including Bernhard Schapira's marriage and death certificates and the Claimant's own birth certificate demonstrating that Bernhard Schapira is his father. The Claimant stated that his father had one other surviving heir, the Claimant's sister, Franzi Schapira [REDACTED]. In addition, the Claimant has plausibly shown that Account Owner Saul Schapira is his uncle, by providing information including his uncle's place of residence in Vienna and his profession as an attorney. There is no information to indicate that Account Owner Saul Schapira has surviving heirs other than the Claimant and his sister. The CRT notes that the Claimant's sister has not filed a claim either to the account of Bernhard Schapira or the account of Saul Schapira.

The Issue of Who Received the Proceeds of Account Owners

Accounts of Bernhard Schapira

Regarding the custody account numbered 33690, given the application of Presumptions (a), and (j), contained in Appendix A,¹ the CRT concludes that it is plausible that the account proceeds of the account 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.

Regarding the savings account, given the application of Presumptions (h), and (j), contained in Appendix A, the CRT concludes that it is plausible that the account proceeds of the account were not paid to the Account Owners or their heirs.

Accounts of Saul Schapira

Regarding the custody account numbered 37629, given the application of Presumptions (a), and (j), contained in Appendix A, the CRT concludes that it is plausible that the account proceeds of the account 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.

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

Regarding the savings account, given the application of Presumptions (h), and (j), contained in Appendix A, the CRT concludes that it is plausible that the account proceeds of the account 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 claimed accounts belonged to Victims of Nazi Persecution. Second, the Claimant has plausibly demonstrated that the Account Owners were his father and uncle, and those relationships justify an Award. Finally, the CRT has determined that it is plausible that neither of the Account Owners nor their heirs received the proceeds of the claimed accounts.

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 a custody account was 13,000.00 Swiss Francs, and the value of a savings account was 830.00 Swiss Francs, making a total account value of 13,830.00 Swiss Francs for each Account Owner, and a combined total account value of 27,660.00 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 331,920.00 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 215,748.00 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).

³ 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).