

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Accounts of Alfred Schindler and Rose Schindler

Claim Numbers: 218404/EZ, 218432/EZ¹

Award Amount: 359,400.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED], née [REDACTED], (the “Claimant”) to the accounts of Alfred and Rose Schindler (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

The Claimant submitted two Claim Forms identifying the Account Owners as her step grandparents, Alfred and Rose Schindler.

The Claimant was born on 31 August 1923 to [REDACTED] and [REDACTED], in Berlin, Germany. The Claimant was raised by her mother, who owned a hotel in Bad Neuenahr, Germany, near the French border. When the Claimant reached the age of ten, her mother told her that her biological father was [REDACTED], whom she divorced on 8 March 1926. The Claimant was told by her mother that her biological father was married for the second time to Erna Alma Schindler, whose parents were Alfred and Rose Schindler, and that they lived in Berlin. According to the Claimant, the Schindler family was Jewish. Due to the Claimant’s young age and the onset of the Second World War, the Claimant never met her father. The Claimant was sent to Belgium in the “*Kindertransport*” in 1938 and survived the Holocaust. Her mother was murdered by the Nazis in the Riga ghetto. The Claimant was later adopted by her uncle [REDACTED]. After the Holocaust, the Claimant inquired about her father and found that he was also murdered together with his second wife in the Riga ghetto. The Claimant could not provide any biographical details about her step-grandparents, Alfred and Rose Schindler.

¹ The Claimant submitted an additional claim to the account of [REDACTED], which is registered under the Claim Number 218405. The CRT will treat the claim to this account in a separate decision.

In support of her claim, the Claimant provided the death declaration of her stepmother, issued by the German authorities, indicating that she was murdered in the Riga ghetto and that she was married to the Claimant's father. According to this document, Alma Schindler was born on 10 July 1898 in Kattowitz. The Claimant also provided her birth certificate indicating that she was born to [REDACTED] and [REDACTED] in Berlin, and her date of birth.

The Claimant previously submitted an Initial Questionnaire with the Court in 1999, asserting her entitlement to a Swiss bank account owned by her stepmother, Erna Alma [REDACTED], née Schindler.

Information Available in the Bank Record

The bank records consist of power of attorney forms and printouts from the Bank's database. According to these records, Account Owner Dr. Alfred Schindler owned a custody account² and an account of unknown type. The Power of Attorney Holder was Alma Schindler who resided in Berlin, Germany. The bank records show that the accounts held by Dr. Alfred Schindler were opened on 30 January 1931, when the power of attorney form was signed. An additional custody account was owned by Rose Schindler and the Power of Attorney Holder was Dr. Alfred Schindler. The custody account owned by Rose Schindler was opened on 1 January 1929, when its power of attorney form was signed. The bank records do not indicate the value of these accounts. The bank records indicate the Account Owners' and the Power of Attorney Holders' street address in Berlin.

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. There is no evidence in the bank records that the Account Owners, the Power of Attorney Holders, or their heirs closed the accounts and received the proceeds themselves.

The CRT's Analysis

Joinder of Claims

According to Article 37(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 two claims of the Claimant in one proceeding.

² The bank records contain a power of attorney form that references a "*Titeldepot*," which is a custody account. Such forms were typically used by the Bank at the time regardless of whether the account in question was in fact a custody account. The CRT concludes that it is plausible that the Account Owner held such an account.

Identification of the Account Owners

The Claimant has plausibly identified the Account Owners. Her step-grandparents' names and her stepmother's name match the published names of the Account Owners and the Power of Attorney Holders, respectively. The Claimant stated that her stepmother resided in Berlin, which matches published information about the Power of Attorney Holder Alma Schindler contained in the bank records. Furthermore, although Alfred Schindler's accounts and Rose Schindler's account were published separately, the Claimant identified a connection between them.

The CRT also notes that the Claimant filed an Initial Questionnaire with the Court in 1999, asserting her entitlement to a Swiss bank account owned by Erna Alma [REDACTED], née Schindler, who was the Power of Attorney Holder, prior to the publication in February 2001 of the list of accounts determined by ICEP to be probably or possibly those of Victims of Nazi Persecution (the "ICEP List"). This indicates that the Claimant has based her present claims not simply on the fact that an individual identified on the ICEP List as holding the Power of Attorney over a Swiss bank account bears the same name as her relative, but rather on a direct family relationship that was known to her before the publication of the ICEP List. It also indicates that the Claimant had reason to believe that her relative and her family owned a Swiss bank account prior to the publication of the ICEP List. This provides additional support to the credibility of the information provided by the Claimant.

Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named [REDACTED] née [REDACTED], and indicates that she was born on 10 July 1898 in Katowitz, resided in Berlin and was murdered in the Riga ghetto, which matches the information about the Power of Attorney Holder provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

The CRT notes that other claims to the accounts of Rose and Alfred Schindler were disconfirmed because information about the claimed account owners' street address and profession provided by these claimants did not match the information about the Account Owners in the bank records.

Status of the Account Owners as Victims of Nazi Persecution

The CRT notes that the Claimant has provided no information regarding the fates of the Account Owners. Nevertheless, the Claimant stated that her step-grandparents and stepmother were Jewish and lived in Berlin during the Holocaust. The Claimant also indicated that her stepmother was murdered along with her husband, the Claimant's father, in the Riga ghetto. The CRT determines that it is plausible that the Account Owners were Targets or Victims of Nazi Persecution.

The Claimant's Relationship to the Account Owners

The Claimant has plausibly demonstrated that she is related to the Account Owners and to Power of Attorney Holder Erna Alma [REDACTED], née Schindler, by submitting documents, including her birth certificate and the death declaration of her stepmother, issued by the German

authorities, indicating that she was murdered in the Riga ghetto and that she was married to the Claimant's father. There is no information to indicate that the Account Owners have other surviving heirs.

The Issue of Who Received the Proceeds

Given the Nazi campaign to confiscate the foreign and domestic assets of its Jewish nationals, the fate of Power of Attorney Holder Erna Alma [REDACTED], née Schindler, and the application of Presumptions (h) and (j), as provided in Article 28 of the Rules (see Appendix A), 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, 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 18 of the Rules. Second, the Claimant has plausibly demonstrated that the Account Owners were her step grandparents, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owners, the Power of Attorney Holder, nor their heirs, received the proceeds of the claimed accounts.

Amount of the Award

In this case, the Account Owners had two custody accounts and an account of unknown type. Pursuant to Article 29 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 average value of an account of unknown type was 3,950.00 Swiss Francs. Consequently, the total value of two custody accounts and an account of unknown type was 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 31(1) of the Rules, to produce a total award amount of 359,400.00 Swiss Francs.

Scope of the Award

The Claimant should be aware that, pursuant to Article 20 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
March 11, 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).