

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant [REDACTED]

in re Accounts of Levin Schlenger and Levin Slenger

Claim Number: 215239/MD

Award Amount: 217,320.00 Swiss Francs

This Certified Award is based upon the claim of [REDACTED], née [REDACTED], (the “Claimant”) to the accounts of Levin Schlenger and Levin Slenger¹ (the “Account Owner”) at the Basel and Chiasso branches 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 her great-uncle, Levin Schlenger, who was born in 1887 in Varaždin, Croatia to Mavro and Johana Schlenger. The Claimant stated that Levin Schlenger was married to Marija Schwarz, and that the couple had two children: [REDACTED], who was born in 1922 in Varaždin, and [REDACTED], who was born in 1923 in Varaždin. The Claimant explained that her relative was a factory owner and lived with his family in Zagreb, Croatia. The Claimant indicated that the last address used by Levin Schlenger in Zagreb was Bogoviæeva 4.

The Claimant stated that her great-uncle, who was Jewish, was killed in October 1942 in the camp of Jasenovac. The Claimant stated further that Marija Schlenger perished in the St. Gradiška concentration camp in September 1942, and that [REDACTED] and [REDACTED] perished in the Jadovno camp in July 1941.

The Claimant explained that Levin Schlenger was the brother of the Claimant’s paternal grandmother, [REDACTED], née [REDACTED]. According to the family tree provided by the Claimant, [REDACTED] had one child, [REDACTED]. The Claimant indicated that she is the only child of [REDACTED], and that she was born in 1949 in Zagreb. In support of her claim,

¹ The bank records indicate that the Account Owner used alternative spellings of his name, Schlenger and Slenger.

the Claimant submitted the birth certificates of Levin Schlenger and [REDACTED], a letter written by Levin Schlenger with his signature sample, court decisions declaring Levin Schlenger, his wife, and his sons, dead, as well as probate decisions to the estates of Levin Schlenger, [REDACTED], and [REDACTED]. The documents provided by the Claimant indicate that her relative used alternative spellings of his last name, Schlenger and Slenger.

Information Available in the Bank Records

Basel Branch

The bank records at the Bank's Basel branch consist of a power of attorney form that was signed on 23 October 1938, and a signature sample card. According to these records, the Account Owner was Levin Slenger, and the Power of Attorney Holder was Maria Slenger, née Schwarz, who resided in Zagreb at Bogoviceva 4. The bank records indicate that the Account Owner held a custody account, numbered 42882.

The bank records do not show 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" 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.

Chiasso Branch

The bank records at the Bank's Chiasso branch consist of letters sent from the Account Owner to the Bank, a power of attorney form, an account opening card, and signed forms setting general terms of contract. These records indicate that the Account Owner was Levin Schlenger and that the Power of Attorney Holder was Marija Schlenger who resided in Zagreb at Bogoviceva 4. According to the bank records, the Account Owner held a demand deposit account numbered 2043 that was denominated in United States Dollars, a demand deposit account numbered 2381 that was denominated in Sterling Pounds, and a passbook account numbered 2382. The demand deposit account numbered 2043 was opened in March 1940, and the passbook account was opened in January 1940. The opening date of the demand deposit account numbered 2381 is not available.

The correspondence with the Bank indicates that in May 1940 the Account Owner ordered the Bank to transfer the balance of the demand deposit account, numbered 2043, to the account of Levin Slenger at the National City Bank of New York, and that he twice requested a confirmation of this transfer in June 1940. The bank records indicate that the Bank replied to that order and to the subsequent letters, but these responses are not available.

With respect to the demand deposit account numbered 2381 and the passbook account, the bank records do not show when these accounts were closed, or to whom they were paid, nor do these records indicate the values of these accounts.

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 Holder, or their heirs closed the accounts and received the proceeds themselves.

The CRT’s Analysis

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. Her relatives’ names match the published names of the Account Owner and the Power of Attorney Holder. The claimant provided the maiden name of the Account Owner's wife, which matches the information about the Power of Attorney Holder contained in the bank records. The Claimant also provided her great-uncle’s address in Zagreb, which matches precisely the unpublished address of the Account Owner contained in the bank records. Finally, the Claimant submitted a sample of her relative’s signature, which matches the signature samples contained in the bank records.

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, who was Jewish, was killed in the Jasenovac concentration camp.

The Claimant’s Relationship to the Account Owner

The Claimant has plausibly demonstrated that she is related to the Account Owner by submitting documents, including her great-uncle’s and her grandmother’s birth certificates, as well as probate decisions to the estates of her great-uncle, her grandmother, and her father, demonstrating that the Account Owner was her grandmother’s brother.

The Issue of Who Received the Proceeds

Given the death of the Account Owner in 1942 after the German invasion of Yugoslavia in 1941, and the application of Presumptions (h), (i) 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, the Power of Attorney Holder, 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.

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

The bank records indicate that the Account Owner ordered the transfer of the proceeds from the demand deposit account numbered 2043 at the Chiasso Branch to the account of a U.S. bank in New York, but the record is unclear as to whether this transfer was implemented. In the absence of evidence of completion of the transfer, the CRT will assume that the value of the account is unknown, and will make an award for this account based on the average value for a demand deposit account.

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 her great-uncle, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner, nor the Power of Attorney Holder, nor their heirs received the proceeds of the claimed accounts.

Amount of the Award

In this case, the Account Owner held a custody account at the Basel Branch of the Bank and a passbook account and two demand deposit accounts at the Chiasso Branch. 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, the average value of a demand deposit account was 2,140.00 Swiss Francs, and the average value of a passbook account was 830.00 Swiss Francs. Accordingly, a cumulative average value of a custody account, two demand deposit accounts, and a passbook account is 18,110.00 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 217,320.00 Swiss Francs.

Initial Payment

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 value, and 65% of the total award amount is 141,258.00.00 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 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

December 31, 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).