

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimants [REDACTED 1]¹
and [REDACTED 2]

in re Account of Wilhelmine Schoenholz

Claim Number: 601584/AA; ENG-0272-060/AA

Award Amount: 1,980,000.00 Swiss Francs

This Certified Award is based upon the claims of [REDACTED 1] (“Claimant [REDACTED 1]”) and [REDACTED 2] (“Claimant [REDACTED 2]”) (together “the Claimants”) to the account of Wilhelmine (“Minna”) Schoenholz (the “Account Owner”) at the [REDACTED] (the “Bank”).²

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 Claimants

Claimant [REDACTED 1]’s late husband, [REDACTED], submitted a claim to the Holocaust Claims Processing Office (“HCPO”) in December 1997 and an Initial Questionnaire to the Court on 8 August 1999. He also submitted, jointly with his sister, Claimant [REDACTED 2], an ATAG Ernst & Young claim form on 10 December 1997 as part of the CRT I claims resolution process. Claimant [REDACTED 2] also submitted an Initial Questionnaire to the Court on 19 September 1999. In all their claims, the Claimants identified the Account Owner as the grandmother of Claimant [REDACTED 1]’s late husband and of Claimant [REDACTED 2], Wilhelmine (“Minna”) Schoenholz, who was Jewish and was born on 6 November 1862 in Neuss am Rhein, Germany. The Claimants stated that Wilhelmine Schoenholz was engaged to be married, but her fiancé died in 1889 en route to the United States. The Claimants indicated

¹ [REDACTED 1] succeeds as Claimant to the claim of her late husband, [REDACTED], who died on 20 January 2001, after having filed a claim numbered B-00539 with the Holocaust Claims Processing Office (“HCPO”) of the New York State Banking Department on 11 December 1997. This claim was referred by the HCPO to the CRT and has been assigned Claim Number 601584/AA. The CRT recognizes that [REDACTED 1], as wife of the late [REDACTED], is pursuing this claim and refers to her as “Claimant [REDACTED 1]” in this Award.

² The [REDACTED] was founded in 1889 and was acquired by the Bern branch of the [REDACTED] on 1 July 1923.

that the mother of Claimant [REDACTED 1]'s late husband and of Claimant [REDACTED 2], [REDACTED], née [REDACTED], was the only child of Wilhelmine Schoenholz, and that she was born on 19 September 1889 in Osnabruck, Germany, shortly after the death of her father.

The Claimants indicated that Wilhelmine Schoenholz lived at Seerobenstrasse 26 in Wiesbaden, Germany for 35 years. The Claimants indicated that Wilhelmine Schoenholz owned a corset and lingerie shop, which was established in 1904 and originally located at Grosse Burgstrasse 12. According to the Claimants, Wilhelmine Schoenholz's business was a walk-in shop and studio at which made-to-measure items were produced. The Claimants stated that until 1918 Wilhelmine Schoenholz was a purveyor to the court of the Queen of Württemberg, as well as the Grand Duchess of Hesse, and the last Russian Tsarina. The Claimants indicated that Wilhelmine Schoenholz was considered wealthy and independent, maintaining business relationships in Italy, France, the Netherlands and Great Britain, and that she employed a number of seamstresses, as well as shop assistants. The Claimants stated that until 1932, Wilhelmine Schoenholz traveled to Switzerland regularly, visiting St. Moritz, Geneva, and Zürich and that while there she lived in hotels and was accompanied by a relative who was her maid ("*Hausdame*"). Furthermore, the Claimants stated that Wilhelmine Schoenholz spent approximately five weeks every winter in St. Moritz.

According to the Claimants, after the Nazis' rise to power, Wilhelmine Schoenholz was forced out of her residence and to move her shop. She was relocated to Bismarkring 6 on 5 October 1936; to Walluferstrasse 2 on 4 October 1941, to Bahnhofstrasse 46 on 13 May 1942, and to Walluferstrasse 15 on 17 June 1942. Her shop was moved to Bismarckstrasse 3 and was ultimately closed by the Nazis. The Claimants indicated that Wilhelmine Schoenholz was deported to Theresienstadt in 1942. She is presumed to have been killed there, because she was never heard from after the Second World War. Claimant [REDACTED 1] stated that her late husband was also persecuted by the Nazis and survived in hiding and subsequent imprisonment in France, from where he was liberated in 1944.

The Claimants indicated that in 1929 Wilhelmine Schoenholz inherited 250,000.00 United States Dollars from the family of her late fiancé, of which she used 165,000.00 Swiss Francs in 1931 to open an interest-bearing Swiss bank account. Claimant [REDACTED 1] explained that her late husband's family has sought the return of these assets since the end of the Second World War and that her mother-in-law included all available information with her filings with the restitution authorities in Germany. In 1951, Claimant [REDACTED 1]'s mother-in-law sought information from the Bank's headquarters regarding a Swiss bank account belonging to her mother, but was unsuccessful. In 1958, Claimant [REDACTED 1], her late husband, and her mother-in-law made inquiries in person at the Bank, and were asked to leave. In 1996, Claimant [REDACTED 1]'s late husband forwarded all available documents to the Swiss Banking Ombudsman, who forwarded them to ATAG Ernst & Young.

Claimant [REDACTED 1]'s late husband, [REDACTED] was born on 25 March 1922 in Heidelberg, Germany to [REDACTED], née [REDACTED], and [REDACTED]. The Claimants indicated that [REDACTED] died on 11 December 1976 in Heidelberg, and that [REDACTED] died on 20 January 2001 in Ingolstadt, Germany. Claimant [REDACTED 2] indicated that she

was born on 6 June 1931 in Heidelberg, Germany. Claimant [REDACTED 1] indicated that she was born on 27 September 1937 in Stettin.

In support of their claims, the Claimants submitted portions of Wilhelmine Schoenholz's "Jewish file" ("*Judenakte*"), which was created by the Nazi authorities and was numbered 9722. The portion of the file provided by the Claimant [REDACTED 1]'s late husband includes the cover page to the file on which it is written "*Evakuiert 1942*," signifying the deportation of Wilhelmine Schoenholz to a concentration camp. This cover page also includes the notation "*über 165,000 Schweizerfranken*" ("over 165,000 Swiss Francs"). The balance of the file includes an undated document wherein Wilhelmine Schoenholz applied for a "*Sicherungskonto*" and stated she was seventy-seven years old, that she was very poor, was living on social welfare provided by the Jewish community and that her life was a life of want. A notation in the file states that this application was denied and the denial justified on the basis of her Swiss bank account. Further, the file contains a notation that measures were being taken regarding the matter. Finally, in an additional document dated 2 October 1942, which was provided by Claimant [REDACTED 1], it is noted that Wilhelmine Schoenholz was "evacuated" and that the security order was completed and that such notation would be made on her "*Judenkarte*."

In further support of their claims, the Claimants submitted Wilhelmine Schoenholz's will dated 7 November 1935, which indicates the existence of an apartment, an insurance policy, precious stones, jewelry, precious metals, cash including 165,000.00 Swiss Francs in a Swiss bank account, and her business, and through which she established her daughter, [REDACTED], as her sole heir. Claimant [REDACTED 1] provided her late husband's birth certificate, her sister-in-law's birth certificate, her mother-in-law's death certificate and an Inheritance Certificate ("*Erbschein*") that was issued on 12 September 1997 and which indicates that Claimant [REDACTED 1]'s husband and Claimant [REDACTED 2] were the beneficiaries of the estate of [REDACTED]. Claimant [REDACTED 1] also provided correspondence between her late mother-in-law and various German organizations documenting her search for her mother after the Second World War.

Information Available in the Bank Record

No bank records belonging to the account of Wilhelmine ("Minna") Schoenholz were located by the Bank or by 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.

However, the Claimants provided documents created by the German government that were part of Wilhelmine ("Minna") Schoenholz's "Jewish File," which showed that she owned a Swiss bank account valued at 165,000.00 Swiss Francs. The file does not contain an indication of the type of bank account that contained the funds. While the German Government documents do not provide the exact date of the Swiss Franc value established for this account, the dates reflected on the document are 1940 and 1942. Furthermore, such a Swiss bank account was referenced in Wilhelmine ("Minna") Schoenholz's 1935 will, which was provided by the Claimants. Finally, a

handwritten entry on the excerpt from the “Jewish File” indicates that Wilhelmine (“Minna”) Schoenholz was deported in 1942.

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 claims of Claimant [REDACTED 1] and Claimant [REDACTED 2] in one proceeding.

Identification of the Account Owner

The Claimants have plausibly identified the Account Owner as Claimant [REDACTED 2]’ grandmother and the grandmother of Claimant [REDACTED 1]’s late husband. In support of their claims, the Claimants submitted documents including Wilhelmine Schoenholz’s birth certificate, portions of Wilhelmine Schoenholz’s “Jewish file,” and her will. Claimant [REDACTED 1] submitted her late husband’s birth certificate and Claimant [REDACTED 2] submitted her birth certificate. Moreover, the CRT notes that a database containing the names of victims of Nazi persecution includes a person named Minna Schoenholz, and indicates that her date of birth was 6 November 1862 and place of birth was Neuss and that she resided in Wiesbaden, Germany, which matches the information about the Account Owner provided by the Claimant. The database is a compilation of names from various sources, including the Yad Vashem Memorial of Israel.

Status of the Account Owner as a Victim of Nazi Persecution

The Claimants have made a plausible showing that the Account Owner was a Victim of Nazi Persecution. The Claimants stated that the Account Owner was Jewish and that she perished in Theresienstadt sometime after her imprisonment there in 1942. A handwritten entry on the excerpt from the “Jewish File” indicates that Wilhelmine (“Minna”) Schoenholz was deported in 1942. These facts are supported by the CRT database of Victims of Nazi Persecution as described above.

The Claimants’ Relationship to the Account Owner

The Claimants have plausibly demonstrated that they are related to the Account Owner by submitting documents demonstrating that Wilhelmine Schoenholz was the grandmother of Claimant [REDACTED 2] and Claimant [REDACTED 1]’s late husband. There is no information to indicate that the Account Owner has surviving heirs.

The Issue of Who Received the Proceeds

Although there are no Bank records for the account of Wilhelmine Schoenholz located by the ICEP auditors, the CRT concludes that the German Government files provided by the Claimant provide plausible evidence of the existence of her account. Given the Account Owner's death in a concentration camp in 1942 and the application of Presumptions (d), (e), (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 Owner or her 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 Claimants. First, the claim is admissible in accordance with the criteria contained in Article 18 of the Rules. Second, the Claimants have plausibly demonstrated that the Account Owner was the grandmother of Claimant [REDACTED 2] and Claimant [REDACTED 1]'s late husband, and those relationships justify an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner nor her heirs received the proceeds of the claimed account.

Amount of the Award

In cases where the bank records do not contain information on account values, the CRT uses the average values of the type of account as specified in Article 29 of the Rules. However, in this case the Claimants have submitted credible information on the value of the claimed account. The Claimants' submissions indicate that the value of this account of unknown type was 165,000.00 Swiss Francs as of 1940. As noted above, the Claimants submitted Wilhelmine Schoenholz's "Jewish File" and will dated 7 November 1935, both of which detail the existence of a Swiss bank account, and the "Jewish File" specifies the value of that account at that time.

These submissions are entitled to even greater weight in the absence of any information on the value in the bank records and in light of the possibility that the account information might not have been retained because of the Bank's concern about the possibility of double liability due to the indications noted above that the account may have been paid to the Nazi authorities.³ For these reasons, the CRT concludes that it is plausible that the actual value of the account is the amount reflected in the documents provided by the Claimants in support of their claims.

The present value of the amount of the award is determined by multiply the account value by a factor of 12, in accordance with Article 31(1) of the Rules. Consequently, the award amount for this account is 1,980,000.00 Swiss Francs.

³ See Final Report of the Independent Commission of Experts Switzerland – Second World War, at 443-44; see also Independent Committee of Eminent Personages Report on Dormant Accounts of Victims of Nazi Persecution in Swiss Banks, at 83 (discussing double liability).

Division of the Award

According to the principles of distribution set forth in Article 23 of the Rules, Claimant [REDACTED 1], who succeeded her husband as a claimant, and Claimant [REDACTED 2] are each entitled to one-half of the total award amount, or 990,000.00 Swiss Francs each.

Scope of the Award

The Claimants should be aware that, pursuant to Article 20 of the Rules, the CRT will carry out further research on their claims to determine whether there are additional Swiss bank accounts to which they 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).