

CLAIMS RESOLUTION TRIBUNAL

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

Certified Award

to Claimant Hanan Fliess
also acting on behalf of Uri Fliess¹

in re Account of Vera Schwab

Claim Number: 002417/AH

Award Amount: 203,400.00 Swiss Francs

This Certified Award is based upon the claim of Hanan Fliess (the “Claimant”) to the accounts of Vera Schwab (the “Account Owner”) at the Basel branch of the [REDACTED] (the “Bank”).

All awards are published. Where a claimant has not requested confidentiality, as in this case, only the name of the bank has been redacted.

Information Provided by the Claimant

The Claimant submitted a Claim Form identifying the Account Owner as his maternal great-aunt, Vera Schwab, née Joerck or Hess², who was born on 2 December 1879 in Nurnberg, Germany, was married to Dr. Max Schwab, who was born on 21 April 1880 in Wurzburg, Germany, and had one daughter, Sigrid Schwab, who was born on 14 December 1926 in Nurnberg, where the wealthy family resided in a big mansion. The Claimant stated that his great-grandmother, Frieda Schwab, née Frank, the wife of Sigmund Schwab, and his grandmother, Fanny Gottschalk, née Schwab, who were Jewish, opened the account in the name of Vera Schwab, who was a Christian. The Claimant stated that his great-grandmother and grandmother both perished in 1942, in a concentration camp, and that in 1938, Max Schwab had to separate from his wife, in order to save her and their daughter, and fled Germany to the United States, where he died in 1970, after a life of hardship, while Vera Schwab stayed in Germany with their daughter, who had to be hidden throughout the Second World War, and died in poverty at an unknown date. The Claimant further added that his mother died in Israel in 1985 and that the daughter of Vera Schwab, Sigrid Schwab, died in Germany on 14 April 1994, without issue. In a

¹ The Claimant provided some of his relatives’ names only in Hebrew characters in the Claim Form. For the purpose of this written decision, the CRT has transliterated these names into Latin characters. However, to match names provided in the Claim Form with names contained in the banks’ databases, the CRT has used a database created by Yad Vashem, Israel, which provided different variations in Latin characters for each of the names.

² The Claimant submitted a family tree written by his mother, in which Vera Schwab’s maiden name appears to be Joerck. However, the Claimant also submitted an official document regarding the acknowledgment of Vera Schwab for restitution from Germany, which indicates that her maiden name was Hess.

telephone conversation with the CRT on 21 August 2002, the Claimant stated that Frieda Schwab, his great-grandmother, who was very wealthy, sold her house in Wurzburg in 1938 and lived with her daughter at 27 Neustrasse in Mayen, Germany. The Claimant stated that the proceeds of the sale were received in cash, as indicated in a letter dated 28 November 1938 that he submitted, and that his family knew that they were deposited in Switzerland. The Claimant stated that since the deposits were done with strict confidentiality, no one in his family knew the exact details thereof and his mother spent many years trying to locate them. The Claimant submitted documents including correspondence between his mother and Max Schwab from the 1950s in which deposited assets are mentioned; and correspondence from the 1960s in which his mother and Vera and Sigrid Schwab were acknowledged for restitution from Germany. The Claimant also submitted a letter to his mother from the Swiss Justice Department dated 26 November 1971, regarding assets of missing foreigners, referring to her claim of 22 November 1971, a letter dated 30 January 1998 from the Swiss Banking Ombudsman, in which she was informed that no accounts were found, and a list dated April 1947 of the German bank accounts of his grandmother. The Claimant indicated that he was born on 1 May 1936 in Israel, and that he is representing Uri Fliess, his brother, who was born on 2 February 1939 in Israel.

Information Available in the Bank Records

The bank records consist of a notice letter dated 1 May 1925, a withhold mail request dated in Nurnberg on 2 May 1932, a power of attorney form dated in Basel on 29 August 1933, and a printout from the Bank's database. The bank records indicate that the Account Owner was Vera Schwab, née Hess, who is referred to in the second account as Vera Hess and Vera Joerger-Hess, and who, according to the records of the first account, resided in Nurnberg, Germany, as did the Power of Attorney Holder in that file, Dr. Max Schwab. The bank records indicate that the Account Owner held one custody account³ numbered 30721 and another account of an unknown type numbered 30608, which were both opened at an unknown date. The power of attorney form dated 29 August 1933 is signed by Vera Schwab and Max Schwab, and on it the Bank indicates the numbers of both of the accounts. Her signature on the request form also indicates her maiden name, which appears to be Hess. The bank records do not show when the accounts at issue were closed, or to whom they were paid, nor do these records indicate the value of these accounts. The auditors did not find these accounts in the Bank's system of open accounts, and they therefore presumed that they were closed. These 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") 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

³ The power of attorney form in the bank records 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. Although this power of attorney form therefore does not necessarily demonstrate that the Account Owner held custody accounts, in the absence of evidence to the contrary, the CRT concludes that it is plausible that she held such accounts.

Identification of the Account Owner

The Claimant has plausibly identified the Account Owner. His great-aunt's and great-uncle's names, as demonstrated by the Claimant's documents, match the published names of the Account Owner and the Power of Attorney Holder. The Claimant identified his great-uncle's professional title, which matches unpublished information about the Power of Attorney Holder contained in the bank records. The Claimant identified by written records his great-aunt and great-uncle's country and city of residence, which matches published information about the Account Owner's domicile contained in the bank records. In support of his claim, the Claimant submitted documents that go back as early as the 1950s, including correspondence between his mother and Max Schwab and her correspondence with various organizations regarding her family's assets. Finally, the Claimant submitted samples of his great uncle's signature, which resemble the signature sample 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 targeted for Nazi Persecution. The Claimant stated that the true Account Owners, Frieda Schwab and her daughter who were Jewish, were killed in concentration camps and that Vera Schwab, who was married to Max Schwab, the Power of Attorney Holder for the accounts, who was Jewish, had to separate from her husband in 1938, when he fled Germany, and was left alone with their daughter who had to be hidden throughout the Second World War. The Claimant also stated that Vera Schwab in fact deposited assets belonging to the Claimant's great-grandmother and grandmother, who were Jewish.

The Claimant's Relationship to the Account Owner

The Claimant has plausibly demonstrated that he is related to the Account Owner by submitting documents demonstrating that the Account Owner was his great aunt, that the Power of Attorney Holder was his great-uncle, and that Frieda Schwab and Fanny Gottschalk were his great-grandmother and grandmother. There is no information to indicate that the Account Owner has other surviving heirs besides the Claimant and his brother.

The Issue of Who Received the Proceeds

Given the application of Presumptions (e), (h), and (j) contained in Appendix A⁴, 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.

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

⁴ An expanded version of Appendix A appears on the CRT II website -- www.crt-ii.org.

Claimant has plausibly demonstrated that the Account Owner was great-aunt, and that relationship justifies an Award. Finally, the CRT has determined that it is plausible that neither the Account Owner, the Power of Attorney Holder 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 average value of an account of an unknown type was 3,950.00 Swiss Francs. The present values of these amounts are calculated by multiplying them by a factor of 12, in accordance with Article 37(1) of the Rules, to produce a total award amount for both accounts of 203,400.00 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 132,210.00 Swiss Francs.

Division of the Award

The Claimant is representing his brother in these proceedings. According to the principles of distribution set forth in Article 29 of the Rules, the Award will be in favor of any entitled relatives who have submitted claims to the account, in equal shares by representation. Therefore the Claimant and Uri Fliess are each entitled to one-half of each of the accounts at issue.

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).

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 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, and before 1945 or the year in which the freeze of Accounts from the country of residence of the Account 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 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 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 was a child at the time of the Second World War;
- h) the Account 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 and heirs because of the banks' concerns regarding double liability;²
- i) the Account 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 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).